

**In The Matter Of:**  
*Octavio Rodriguez Cira, et al. v.*  
*County of Henry, et al.*

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*Dr. Geoffrey Alpert*  
*June 30, 2022*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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OCTAVIO RODRIGUEZ CIRA and  
FABIOLA MERLOS MARTINEZ,  
as Surviving Parents of  
FERNANDO OCTAVIO RODRIGUEZ,  
Deceased, and  
OCTAVIO RODRIGUEZ, as  
Administrator of the Estate of  
FERNANDO OCTAVIO RODRIGUEZ,

PLAINTIFFS, CIVIL ACTION FILE

VS. NO.: 1:21-CV-01999-VMC

COUNTY OF HENRY, OFFICER  
ROBERT P. BUTERA, In his Individual  
and Official Capacity, and  
OFFICER QUINTON C. PHILLIPS, In  
his Individual and Official Capacity,

DEFENDANTS.

- - - - -  
ZOOM DEPOSITION OF DR. GEOFFREY ALPERT

Thursday, June 30, 2022  
1900 Hayward Street  
Columbia, South Carolina  
10:00 a.m.

ANGIE CORNETT  
Certified Court Reporter

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**[No exhibits were tendered.]**

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P R O C E E D I N G S

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MR. MORRIS: This will be the deposition of Geoff Alpert taken pursuant to agreement and notice I assume with the same rules that y'all operated under with Mr. Lowe reserving objections except to form and responsiveness until first use of the deposition?

MR. JOHNSON: That's fine with me.

MR. MORRIS: Okay. Very good. Will you swear the witness, please.

DR. GEOFFREY ALPERT,  
having been first duly sworn remotely, was  
examined and testified via Zoom conferencing as  
follows:

CROSS-EXAMINATION

BY MR. MORRIS:

A Yes, ma'am.

Q Dr. Alpert, will you go ahead and restate your name, full name for the record.

A Geoffrey Alpert.

Q Okay. And will you tell us where you're currently employed.

1           A     Professor of criminology and criminal  
2 justice at the University of South Carolina.

3           Q     Okay. I'm going to opt to skip the  
4 educational background, all of that stuff. I think  
5 we have got a pretty good record of that  
6 information. So we will forego some of those  
7 traditional background questions if that's all  
8 right.

9           A     Fine with me.

10          Q     Okay. Good. Dr. Alpert, I am, I'm going  
11 to be asking you questions today from the report  
12 that you produced in the Cira or Rodriguez, Fernando  
13 Rodriguez lawsuit against Henry County. The  
14 questions which I'm going to be mostly drawing from  
15 are borne out of your supplemental report that you  
16 produced I believe sort of late May. My belief is  
17 that that report is the same as the original report  
18 plus additional information.

19                   But to make my question a little  
20 clearer, you didn't remove anything from your  
21 initial report. You only added to your supplemental  
22 report; is that correct?

23          A     That's correct. And it's dated May 17th.

24          Q     Okay. Yeah. It is dated May 17th. I  
25 think the date, my save date is 5/23. All right.

1 To begin with I wanted to go over the documents that  
2 you reviewed, both to prepare your original report  
3 and this supplemental report. On page two it  
4 indicates that you reviewed the complaint that you  
5 were provided. Did you review the complaint?

6 A Yes, sir.

7 Q The death certificate for Mr. Rodriguez?

8 A Correct.

9 Q Generally City of Hampton reports?

10 A Yes, sir.

11 Q Generally Henry County police reports?

12 A Yes, sir.

13 Q Video of the incident?

14 A Yes, sir.

15 Q And then it says in the list POST report.

16 I assume what you're talking about there is POST as  
17 in all capital letters P-O-S-T?

18 A Yes, sir.

19 Q Okay. Not as in an after-the-act report.

20 You're talking about Peace Officer Standard and  
21 Training?

22 A Correct.

23 Q Okay. And that is sort of a general  
24 identification POST report?

25 A Yes, sir.

1 Q Okay. Use of force policy?

2 A Correct.

3 Q Taser policy?

4 A Correct.

5 Q O.C. spray policy?

6 A Correct.

7 Q And the amicus brief by Seth Stoughton?

8 A Correct.

9 Q Is there anything else that you reviewed  
10 that did not make its way onto this list?

11 A Yes, sir. I reviewed the 2001 PERF,  
12 P-E-R-F, which is the Police Executive Research  
13 Forum report on tasers and I reviewed -- I don't  
14 know why I didn't put it on here, but the Henry  
15 County use of force training power point that was  
16 provided.

17 Q The Henry County use of force training?

18 A Power point presentation. Yes, sir.

19 Q Do you know what date is on that?

20 A There's no date on it.

21 Q Were you able to draw any conclusions  
22 about the date?

23 A No. I guess I could go in and look at  
24 the -- I didn't think about going in and looking at  
25 the characteristics of the power point, but I cannot



1 do that.

2 Q Okay. Do you know -- so City of Hampton  
3 police report is kind of general. Do you know where  
4 these police reports came from?

5 A Well --

6 Q Where they are?

7 A Everything was sent to me. The reports  
8 that I, that I'm referring to were simply police  
9 reports completed by the officers. And the file was  
10 just called police reports. And I think the, I  
11 think they're called incident reports or something  
12 to that effect.

13 Q So I guess the point of my question is do  
14 you know whether or not you have all of the reports  
15 or not?

16 A I have no idea if I have all. The ones I  
17 have, I can go look if you want. But I know the  
18 Henry County officers -- well, I don't know. I  
19 think there were only two if I remember correctly.  
20 I didn't see one by, was it Bowlden?

21 Q All right. So you're not aware if there  
22 are other reports that may exist that you haven't  
23 reviewed?

24 A Right. I wouldn't have any idea. I only  
25 know what I was sent.

1 Q Did you happen to know if there was a GBI  
2 investigation?

3 A I don't recall a GBI investigation. No,  
4 sir.

5 Q Okay. So often times when documents are  
6 shared with an expert like yourself, if there is a  
7 GBI investigation, the GBI typically is sort of a  
8 omnibus source for all of the materials related to  
9 the investigation. You weren't able to look and see  
10 whether or not the reports you received were  
11 collected by the GBI?

12 A I can't tell. When I'm looking at the --  
13 when I'm looking at the police reports they're just  
14 the City typical supplemental reports, reports,  
15 incident reports.

16 Q Okay. And obviously on the report you  
17 didn't indicate by name whose reports you reviewed?

18 A Well, I didn't -- no, in the review  
19 section I did not. I believe on my, the incident  
20 assessment part of my report I cited those specific  
21 reports.

22 Q Uh-huh. And the same answers would apply  
23 for the Henry County reports?

24 A Yes, sir.

25 Q Okay. When you looked at video and you do

1 cite video in your report, which video were you  
2 provided to review?

3 A I can't answer that. I don't know, I  
4 don't know whose body-worn cameras they were.

5 Q Is it your testimony that you reviewed  
6 one, only one video file?

7 A Yes, sir.

8 Q Okay. You're unaware that there are other  
9 video files associated with body-worn cameras that  
10 are a part of this case?

11 A Well, I kind of assumed that, but I wasn't  
12 sent anything else.

13 Q Did you ask for those items and not  
14 receive them?

15 A No, sir.

16 Q Okay. Now that I brought that to your  
17 attention that there are other video files, is that  
18 something that you plan to go back and review?

19 A I might before trial.

20 Q And consequently those may affirm or alter  
21 your conclusions in the report?

22 A Well, the videos normally -- I would like  
23 describing as watching baseball through a straw.  
24 You can only see exactly what the camera is focusing  
25 on. And normally they affirm or contradict the

1 officer's statements. So other than the minutes or  
2 the seconds that are shown on the tape -- it really  
3 is good to kind of see what, if the officers were  
4 reporting what they saw or what they thought.

5 Q And presumably each of these officers  
6 would be, who are wearing body-worn camera, would be  
7 giving you a different perspective of the series of  
8 events leading up to the, you know, use of force and  
9 events thereafter?

10 A Normally the body-worn cameras are looking  
11 at the same event from a different, different angle  
12 maybe. But it sounds like from the descriptions and  
13 the detail of the reports, that they may have been  
14 standing at one direction or another. But all the  
15 reports are very consistent so I would assume the  
16 videos would be.

17 Q Do you think that you need those videos  
18 to -- do you -- let me withdraw that. Now knowing  
19 that there are some videos that exist, do you have  
20 some insecurity in the conclusions that you have  
21 drawn in this report?

22 A No, sir. Most of my opinions are based on  
23 the written reports that they, that were written by  
24 the officers involved. And I didn't see any  
25 inconsistencies.

1 Q Okay. So it's your testimony that you're  
2 not likely to change your opinion even if you, even  
3 after reviewing the videos?

4 A If I see anything that would contradict a  
5 statement in my report, I might change an opinion.  
6 But I don't know. I can't answer it without seeing  
7 it.

8 Q Right. And that's where it gets back to  
9 the question that I asked earlier is are you  
10 insecure in any way about the completeness of your  
11 ability -- of your evaluation in this case?

12 A I'm very -- I am very secure in my  
13 conclusions based on the reports that I read which  
14 are from the officers and very consistent. If  
15 there's something else that comes up, I just can't  
16 answer.

17 Q Right. I mean basically you have a  
18 limited amount of information from which to draw  
19 certain conclusions and evaluate what happened on  
20 the scene?

21 A Well, I wasn't there so I'm always limited  
22 by either what is written or what is filmed or what  
23 is seen by someone else. That's correct.

24 Q Right. I guess a better way to ask that  
25 question is that because there's data points that

1 exist outside of what you reviewed to formulate this  
2 opinion, your opinion in this case is not based upon  
3 a complete set of objective information and data?

4 A Well, you asked the question what, you  
5 know -- you asked the question do I have everything.  
6 I don't know the answer to that other than what you  
7 have mentioned today.

8 Q If I tell you that there are videos from  
9 other officers, multiple other officers, and you  
10 tell me that you only reviewed the video from one  
11 particular officer, you would concede then that you  
12 have not formulated your opinions based upon all of  
13 the evidence available in this case, right?

14 A Well, that would be correct assuming the  
15 videos show something different. If they're all the  
16 same, well, you're right. Technically if there are  
17 videos that I haven't seen, I haven't seen the whole  
18 file. But as I said normally the written reports  
19 are in more detail explaining what you might see.  
20 Unless you see something that was either described  
21 incorrectly or differently, I think the written  
22 reports, are the combination of the written reports  
23 I read give me a pretty good idea of what happened.

24 Q Right.

25 A And honestly, honestly my conclusions,

1 unless they're just wrong based on the, what a jury  
2 would believe, I'm very comfortable with them.  
3 Including the number of times Mr. Rodriguez was  
4 tased, the lack of any kind of discussion or attempt  
5 to diffuse the situation. All those things are  
6 written in great detail and I'm very comfortable  
7 with those.

8 Q Okay. Specific to the issue of compliance  
9 though, you would agree with me that a video is a  
10 better source of information -- often times a video  
11 is a better source of information about the level of  
12 compliance with which an officer encounters?

13 A You mean a suspect's compliance?

14 Q Yes, the suspect's compliance.

15 A It gives you a visual. But again, after  
16 reading all the reports, there's not much  
17 inconsistency. So I have a pretty good sense -- for  
18 example, Mr. Rodriguez was, was not compliant, but  
19 he wasn't fighting. He wasn't arguing. He was just  
20 not doing what they told him to do.

21 Q Uh-huh. The videos would, that you  
22 haven't seen may or may not allow you to observe  
23 information that would indicate greater levels of  
24 resistance -- let me back it up. Let me ask it this  
25 way. Isn't it possible that the videos you haven't

1 seen show levels of resistance that may change that  
2 opinion about compliance?

3 A I can't give you a definitive answer. But  
4 my experience is if there's resistance, officers are  
5 going to write it.

6 Q And the -- it is true that the officers  
7 described him being combative and resisting?

8 A Well, not in the beginning. After he had  
9 been tased and kicked and a few other things, yeah.  
10 But in the beginning it was pretty clear from  
11 everything I read that he wasn't. In fact, if I  
12 recall correctly it was described as the officers  
13 approached him and basically threatened him if he  
14 didn't stop they are going to tase him and he kept  
15 walking, which, you know, I understand he was naked  
16 and I understand -- they don't know what's going on.

17 And they described it fairly  
18 completely. Sure, the video could show something  
19 else. Maybe he didn't walk away. Maybe they were  
20 not telling the truth. I -- the one video showed  
21 pretty much what they described. So.

22 Q Right.

23 A Usually again, videos show the same event  
24 from a different perspective. But I didn't see  
25 inconsistencies between and among the officers.



1           Q     Well, you would agree with me that neither  
2 of my individual clients were present at the  
3 beginning of the --

4           A     That's correct.

5           Q     -- video?

6           A     Correct.

7           Q     So when I say that the videos may show  
8 higher levels of resistance than what you have  
9 described in your report, that would then alter your  
10 opinions?

11          A     Well, if I see something that's not in my  
12 report it might alter the fact pattern. I don't  
13 know if it's going to alter the opinions. When you  
14 talk about my opinions because they are based on a,  
15 pretty much a broad pattern as opposed to one event.

16                   I mean for example, you have Phillips  
17 saying when Rodriguez turned his head towards  
18 Stroud's feet, Stroud kicked him in the face. Now,  
19 I didn't see that specifically in the video. Maybe  
20 Mr. Rodriguez opened his mouth. Maybe he didn't.  
21 It doesn't matter. Step -- take a step back. You  
22 don't just kick him in the face when someone turns  
23 his head towards you. Yeah, there could be a slight  
24 difference, but it doesn't affect my opinion that  
25 that was excessive and unnecessary.

1           Q     The takeaway from this is though that your  
2     opinions are not based upon all of the available  
3     information in this case?

4           A     Well, if there is information that I  
5     haven't seen, then that would be accurate. Yes,  
6     sir.

7           Q     Okay. We went through your list of cases  
8     in a recent deposition. I'm not going to go back  
9     through them. Let me ask this. Have you ever been  
10    retained as an expert in any case, in any case  
11    involving positional asphyxia?

12          A     Yes, sir.

13          Q     Okay. And can you give me the name of  
14    that case.

15          A     Well, there been multiple cases, many of  
16    which involved tasers. Others involve use of force.  
17    Well, I will give you one. George Floyd.

18          Q     Okay. Did you offer a professional  
19    opinion in that case?

20          A     I did not. I was on the civil side. I  
21    was not deposed. They settled before we went to  
22    deposition.

23          Q     Okay.

24          A     I wrote reports. And yes, I offered  
25    professional opinions.

1 Q Okay. And would you be willing to send me  
2 a copy of your report in that case?

3 A I will ask the lawyers if they will allow  
4 it.

5 Q Was that report produced pursuant to Rule  
6 26?

7 A I'm not -- I'm not sure what you mean.

8 Q Well, in your, in your report you describe  
9 it as being a Rule 26 report so I figured you might  
10 know what a Rule 26 report is.

11 A I mean if they tell me it's a Rule 26  
12 report I will put it on there.

13 Q Okay.

14 A But there have been dozens of cases. In  
15 fact, several in Australia, coronial hearings where  
16 I dealt with it. Another one was Daniel Prude. I  
17 testified to the grand jury in Daniel Prude about  
18 positional asphyxia.

19 Q Did you give a written report in Daniel  
20 Prude?

21 A I don't recall if I did or not.

22 Q What would it take for you to be able to  
23 answer that question yes or no?

24 A Probably write the prosecutor.

25 Q Well, would it also not be a document that

1 you save right there on your computer?

2 A When cases are resolved I don't save. I  
3 don't save the.

4 Q So are you saying on your computer right  
5 now you have no file materials or written opinions  
6 related to the Daniel Prude case?

7 A That's correct. Well, I may have, I may  
8 have the grand jury report, but I don't have  
9 anything that I submitted.

10 Q Okay. So it's possible that you submitted  
11 a report to the Office of the Attorney Generals?

12 A You know, I don't think I did because I  
13 think -- well, I don't remember. But I remember  
14 testifying for quite a while to the grand jury and I  
15 don't recall referencing a report.

16 Q Do you know if the Attorney General's  
17 office produced any summary of your report?

18 A Well, I don't remember writing a report.  
19 I don't recall -- I know they -- they submitted a  
20 report on the case.

21 Q Okay. And --

22 A And I don't know if they referenced -- if  
23 I wrote a report if they referenced it or just my  
24 testimony.

25 Q Do you know whether or not the office of

1 the Attorney General summarized your testimony in  
2 the Daniel Prude case?

3 A I don't think they just, they went through  
4 mine particularly. I think they wrote a report on  
5 all of the testimony. It's been -- it's been -- I  
6 read that when it first came out. I was very upset  
7 with them on a couple of things. And I wrote them  
8 and asked them why they missed certain things. And  
9 they apologized and I haven't looked back.

10 Q Do you have a copy of the correspondence  
11 that you sent to them?

12 A No. I don't keep e-mails.

13 Q Okay. What was it about the summary of  
14 your opinions that you disagreed with?

15 A It wasn't a summary. They -- instead  
16 of -- I testified that I believe that the positional  
17 asphyxia was a approximate cause. They put in the  
18 report that I said it was the proximate cause.

19 Q So your opinion was that there were other  
20 proximate causes of his demise?

21 A Yes, sir.

22 Q Okay. Were there any other opinions in  
23 that summary that you -- were there any other  
24 opinions that they attributed to you in that summary  
25 that you did not offer?

1           A     I don't believe so. But when I saw that  
2 one -- excuse me. I pretty much focused on it and  
3 got pretty upset with the lawyers and whoever wrote  
4 the report, the Attorney General, in the Attorney  
5 General's office.

6           Q     Were you asked about any other law  
7 enforcement tactics in that case?

8           A     Oh, yes.

9           Q     Okay. Other than his prone position upon  
10 the ground. I needed to finish my question that you  
11 just answered yes. Were there any other law  
12 enforcement tactics that you were asked about other  
13 than being placed in a prolong prone position?

14          A     Yes, sir.

15          Q     Okay. What were those law enforcement  
16 tactics that you were asked about?

17          A     There was one about where the officer had  
18 his knee on Mr. Prude's head when he was getting  
19 control of him and there was -- I can't -- that was  
20 the one that stuck out. But -- and there probably  
21 were others, but the main --

22          Q     Is that --

23          A     I'm sorry?

24          Q     Isn't it correct that you told the officer  
25 the Attorney General for New York in the Daniel

1 Prude investigation that the head segmentation  
2 tactic was appropriate under the circumstances?

3 A Yes, sir. I said because they were  
4 trained in it, they -- the way the officer described  
5 doing it keeping his knee on his head for a short  
6 period of time. And that was something that the  
7 Department had approved. Yes, sir.

8 Q Okay. Had the Department not approved it,  
9 would it have been, would your opinion had changed?

10 A Probably because I wasn't -- as I  
11 testified to the grand jury and obviously you have  
12 read the report more recently than I have. So I had  
13 not -- I was not familiar with that tactic.

14 Q The --

15 A That is true. I based it on the training  
16 that the officer -- and the training officer  
17 explained and the officer who used that tactic  
18 explained.

19 Q Okay. And in that case force was applied  
20 to Daniel Prude's neck because he was spitting,  
21 correct?

22 A No, sir. Force was not applied to his  
23 neck.

24 Q Okay.

25 A He had his --

1           Q     A knee, a knee as you just testified, was  
2 placed on Daniel Prude's neck because they were  
3 trying to put him in a spit mask?

4           A     No, sir. The knee, the knee was applied  
5 to his head, which I was most concerned about they  
6 didn't put something on the ground because it was  
7 freezing and he was naked. And they put a spit mask  
8 on him after that.

9           Q     What is a hypoglossal maneuver?

10          A     I have no idea.

11          Q     Did you not testify that head segmentating  
12 and the hypoglossal maneuver were reasonable?

13          A     As I testified five minutes ago, yes,  
14 based on the training and the description from the  
15 training officer and the officer who used it. I've  
16 never heard of that term. I seen the technique  
17 done, a similar technique done where, yeah, the knee  
18 on the head was not in any way restricting blood or  
19 oxygen. And it was to see take control of his head.  
20 So, and of course the body follows the head so.  
21 Yeah, I agreed that was reasonable for the amount of  
22 time it was used under the conditions.

23          Q     Okay. And you -- I'm going to tell you,  
24 I'm going to represent to you that the report says  
25 that you, you said it was reasonable for the



1 officers to use a hypoglossal maneuver. Would you  
2 like to see it?

3 A No. I don't disagree with that.

4 Q I just asked you -- I asked you what is a  
5 hypoglossal maneuver because I've never heard of it  
6 either.

7 A It, as you remind -- look, it's been a  
8 long time since I read any of that or testified to  
9 the grand jury. But it was a technique that I never  
10 heard that term and I think you're right. I think  
11 they were, they were kind of included as one. The  
12 sentence you said a while ago kind of reminded me  
13 that yeah, they were combined.

14 Q Okay. The hypoglossal and the -- the  
15 hypoglossal maneuver and the head segmentation?

16 A Yeah. I think the head segmentation is  
17 the term that they used in training. And the  
18 hypoglossal is what, I guess what they did. Like I  
19 said, I'd never heard of it. I had seen that done  
20 differently. Never heard the term before.

21 Q Okay. And as you sit here today do you  
22 remember the specific portions of the video in that  
23 case upon which you use to formulate your opinion?

24 A I remember watching him put his knee on  
25 his head. That's why I was very critical of the

1 fact that they didn't put something down between his  
2 body and the ice cold pavement.

3 Q Were there any -- well, you would concede  
4 that part of your opinion and the need for the level  
5 of force related to the Corona virus, Covid-19  
6 outbreak and the fact that Mr. Prude was spitting?

7 A Yeah.

8 Q The need to control him to apply the spit  
9 mask?

10 A Yes, sir.

11 Q Okay. So they had a heightened reason to  
12 use the head segmentation, hypo -- hypoglossal  
13 maneuver because of the threat of Corona virus?

14 A Well, I think they were, the officers  
15 testified it was more than just Corona virus. There  
16 were all sort of things that they were concerned  
17 about about spitting, which I don't blame them.

18 Q Right. Would you put biting in the same  
19 category as spitting?

20 A No, sir. It's a different category, but  
21 it can be, it can certainly be just as dangerous.

22 Q Okay. Would you, if a subject were trying  
23 to bite an officer, would you generally find it  
24 appropriate for an officer to use the head  
25 segmentating maneuver, hypoglossal maneuver?

1           A       I think you can control the head in a  
2       variety of ways. But yes, if an officer is trying  
3       to bite and you don't have them controlled and you  
4       can't just back away, yes, I think it's reasonable  
5       to use that to put, if you have a spit mask to put  
6       it on. Yes, sir.

7           Q       Okay. Well, a spit mask isn't going to do  
8       much about stopping someone from biting though,  
9       correct?

10          A       The ones I have seen you can't bite  
11       through them.

12          Q       Well, it's porous enough to allow for  
13       breathing, correct?

14          A       Oh, yes, sir.

15          Q       Okay. Do you know where the hypoglossal  
16       nerve is?

17          A       No, sir.

18          Q       Okay. Where would you describe, how would  
19       you characterize the area below the mandible?

20          A       I have no medical training. I have use of  
21       force training in staying away from anything where  
22       you can cut off the blood or cut off the oxygen. So  
23       I can't answer those questions.

24          Q       So if I were to tell you that the  
25       hypoglossal area is the area behind the mandible,

1 would you describe that as being the neck area?

2 A Well, because you were pointing to your  
3 neck I would disagree with you. I don't know.  
4 That's why I testified earlier and testified to the  
5 grand jury I was not aware of that specific  
6 technique or those terms.

7 Q Okay. Would you find it appropriate or  
8 inappropriate for a law enforcement officer to use a  
9 tactic of applying pressure beneath the jaw?

10 A If you're talking about the neck area  
11 where you're cutting off oxygen, yes, sir.

12 Q Okay. And if that area were also the  
13 hypoglossal area, how would you reconcile that?

14 A Because what I saw in the Daniel Prude  
15 video was an officer's knee on a forehead -- not on  
16 a forehead, but on the side of his head, not  
17 anywhere near his neck and certainly not an area  
18 that was cutting off blood or oxygen.

19 Q Is it fair to conclude that you're not an  
20 expert in either the head segmentating procedure or  
21 the hypoglossal maneuver?

22 A As I've never heard of them before. Yes,  
23 sir.

24 Q Okay. So you offered opinions in George  
25 Floyd. You offered opinions in Daniel Prude. Both

1 of which are positional asphyxia cases. As you sit  
2 here today are there any cases that are listed on  
3 your Rule 26 report that are, any other cases that  
4 are positional asphyxia cases?

5 A There are a lot that I have testified in  
6 over the years that deal with positional asphyxia.  
7 Yes, sir. I can't tell you which ones.

8 Q Okay. I will go through them.

9 A It's not going to do me any good. I  
10 don't, I don't remember the specific facts of the  
11 cases and which ones would involve a positional  
12 asphyxia or compression asphyxia issue.

13 Q Right. But I want to go and I want to  
14 call these lawyers and I want to get your deposition  
15 testimony and I want to find out what opinions you  
16 offered. And so I don't want to be calling people  
17 on chase cases. And if you can isolate the cases  
18 that are positional asphyxia.

19 A Well, I can tell you the ones that say  
20 pursuit next to them were probably not. And the  
21 ones that said use of force, if there's a taser -- I  
22 mean, I just don't know. Sometimes use of force  
23 they leave them on their stomachs too long and  
24 that's part of the problem and sometimes they don't.

25 Q Yeah. Cause some of these are just

1 referred to as use of force cases and that's why I  
2 cannot discern whether they're not -- I can't  
3 discern whether or not they're positional asphyxia  
4 cases.

5 A Right. Right. I can't either.

6 Q So let me jump to that in your opinion.  
7 Do you have it in front of you?

8 A What's that?

9 Q Do you have your list of cases in front of  
10 you?

11 A I can get it.

12 Q That will be great.

13 A Yes, sir.

14 Q All right. And the one that I have, what  
15 I have is from 2018 to 2022.

16 A Correct.

17 Q That's what I'm seeing. I believe it's  
18 on, the pagination is a little different. Claypoole  
19 was a pursuit. Frantom was a pursuit. Seabrooks  
20 pursuit. Driving was Lopez. Wanskek. What about  
21 Garber? That one just says use of force.

22 A Yeah. Garber, that was not a positional  
23 asphyxia case.

24 Q It was not?

25 A No, sir.

1 Q Okay. What about Givens versus City of  
2 Chicago?

3 A No. That was, I believe that was a  
4 shooting case.

5 Q Mary Dann v. Heart Heritage?

6 A No.

7 Q Colorado v. Rodarte?

8 A No, sir.

9 Q Okay. Scott v. Charlotte?

10 A No, sir.

11 Q Davis versus Waller?

12 A No, sir.

13 Q Simmons versus Charleston County?

14 A No, sir.

15 Q Okay. Coronial inquest into the death of  
16 Jack Kokaua in Australia?

17 A Yes, sir, that was.

18 Q All right.

19 A Rolfe was not.

20 Q Right. Prude was, yes?

21 A Yes.

22 Q Green versus Valdez?

23 A I don't remember that case.

24 Q Maybe, maybe not. Pizer versus Rock Hill?

25 A No, sir.

1 Q Thorington versus Scott?

2 A I don't think so.

3 Q All right. Those are all the cases that I  
4 have. I didn't see the George Floyd case on there.  
5 But I can only assume that means you didn't offer  
6 sworn testimony or produce a report?

7 A That's correct. No, I did produce a  
8 report. I didn't provide any sworn testimony.

9 Q Okay. And you were retained and paid and  
10 all that stuff?

11 A Yes, sir.

12 Q By the State?

13 A No, sir.

14 Q By who? By the family?

15 A Yes.

16 Q Okay. All right. Do you know how you got  
17 involved in this case?

18 A I got a phone call I would assume. I  
19 don't have the specific recollection. I would  
20 assume I got a call as normally happens.

21 Q Who was it from? Do you know if it was  
22 from Mr. Johnson or another lawyer or the family?

23 A Well, it wasn't the family. It was  
24 probably Mr. Johnson.

25 Q Okay. Did you have any prior relationship



1 with Mr. Johnson? You ever worked for him or  
2 offered him any opinions?

3 A No, sir.

4 Q And what were you asked to do?

5 A Well, again, in all these cases I ask what  
6 the basic facts were that the attorney thinks the  
7 jury is going to believe or what the issues were.  
8 And when I said it was something I think I could  
9 assist with, it was in my will-house, I was asked to  
10 look, to review the information and provide opinions  
11 on the behavior of the officers and the, I believe  
12 the policies.

13 Q Okay. Do you recall when that contact was  
14 made?

15 A No. I'm trying to remember. I guess it's  
16 not on the -- it's not on my report. It probably  
17 was about a year ago, something like that.

18 Q Were you advised to whether or not the  
19 City of Hampton defendants had been dismissed at  
20 this point or not?

21 A I don't recall that.

22 Q Do you know as you sit here that the City  
23 of Hampton police officers are no longer defendants  
24 in this action?

25 A Yes, sir.

1 Q Okay. When did you become aware of that?

2 A I don't recall. Somewhere along the line.  
3 I don't -- I don't have any idea of when that part  
4 of the case was resolved.

5 Q Prior to you offering an opinion in this  
6 case, prior to you offering an opinion in this case,  
7 did Mr. Johnson offer you any written summary or --  
8 [audio difficulty.]

9 THE COURT REPORTER: I'm sorry, Mr.  
10 Morris. You froze up. Could you repeat your  
11 question, please.

12 BY MR. MORRIS:

13 Q I'm sorry. Prior to you being retained in  
14 this case, did Mr. Johnson or anyone associated with  
15 the two plaintiffs in this case provide you with a  
16 summary, written summary of the facts?

17 A Other than what was in the complaint which  
18 I normally don't read very closely, no, sir.

19 Q Okay. So is my conclusion correct that  
20 all of the information that you received about this  
21 case prior to being retained was through  
22 Mr. Johnson's verbal account?

23 A That's correct.

24 Q Okay. Since the, being retained has  
25 Mr. Johnson provided you with any -- has Mr. Johnson

1     corresponded with you?

2             A     Yes, sir.

3             Q     Okay. Has he included facts or materials  
4     or arguments that he intends to advance in any of  
5     those communications?

6             A     Well, no. I mean I don't know what he  
7     intends to advance, but he certainly never  
8     communicated with me. He never provided me any  
9     summaries or any information. No, sir.

10            Q     How many e-mails has he sent you?

11            A     I have no idea. Probably more in the last  
12     week than before. But there were a handful of them  
13     I guess. Mostly about coordinating times and  
14     nothing of great substance.

15            Q     Okay. So is it your opinion that you were  
16     not provided any information that was used to  
17     calculate your opinion or incorporate into your  
18     final opinion?

19            A     Nothing I haven't, we haven't talked  
20     about, no, sir.

21            Q     Okay. What methodology did you use to  
22     review and form your opinions?

23            A     Well, I tried to put together this  
24     incident assessment as well as I could based on the  
25     information that I had, which were the reports,

1 video and statements. I compared that against my  
2 understanding of common police practice. And I  
3 found significant gaps between what they did and  
4 what they should have done.

5 Q Okay. Let me ask, I'm going to jump ahead  
6 a second. Have you participated in any scientific  
7 studies -- let me withdraw that. Have you been  
8 responsible for conducting any studies related to  
9 positional asphyxia?

10 A No, sir.

11 Q Okay. You have done no research, formal  
12 research in the area of positional asphyxia?

13 A I have not done any original research into  
14 the issue of positional or compression asphyxia. I  
15 have not measured -- and part of the problem is to  
16 do it properly would be unethical because you can't  
17 measure young police cadets or students or officers  
18 responses and actions. You know, I will just put it  
19 to you this way. I have never had -- I played  
20 sports in college. I played sports after college.  
21 And I have never seen anyone after exerting him or  
22 herself lay down on a stomach to relax.

23 Q Right. But you would agree with me that  
24 there are people who have conducted formal  
25 scientific studies about the positional asphyxiation

1 phenomenon?

2 A They have and they have used healthy  
3 subjects. And that's the problem.

4 Q Have you ever served as a peer review or  
5 conducted a formal criticism, written criticism of  
6 any of these studies on positional asphyxia?

7 A Well, I have, I have reviewed articles  
8 that have been written. I have -- I have used some  
9 of those articles. And really the same things I'm  
10 telling you now is that when you do research in the  
11 lab and I have written this several times, to do it  
12 properly with subjects who are either significantly  
13 overweight or who are under the influence of alcohol  
14 and/or drugs, is unethical.

15 So I, my concern there is subjects  
16 who are, who volunteer to do this work are usually  
17 healthy, either students or police officers or  
18 cadets and that's not who the subject of these  
19 police involved compression and positional asphyxia  
20 cases involve.

21 Q Right. But these studies that are  
22 conducted, in order to be published with  
23 credibility, they have to go through a rigorous peer  
24 review criticism, correct?

25 A Well, peer review is -- yes, they do have

1 to go -- most of the journals, a lot of journals and  
2 professional publications they don't use good peer  
3 review, but in the academic ones, yes.

4 Q And the academic ones probably have more  
5 scrutiny and, therefore, more credibility in the  
6 conclusions drawn, correct?

7 A Well, it depends on the methods. You can  
8 conclude all you want. If you're using bad methods.  
9 For example, medical journals that are reviewed by  
10 doctors, most doctors are not researchers. They are  
11 medical doctors.

12 Q Rights. But the research has gone through  
13 a level of rigor and criticism that gives it an  
14 inherit level of credibility in the industry,  
15 correct?

16 A I can't answer that question for -- I  
17 don't read medical journals very often. I read  
18 them. I don't understand a lot of it. I'm not a  
19 medical doctor. But I can tell you the, what -- the  
20 common police practice is to roll someone over off  
21 their stomach as soon as possible and end of story.

22 Q Right. Back to my original question. You  
23 have not been responsible for coordinating any  
24 scientific studies into the phenomenon of positional  
25 asphyxia, have you?

1           A     No, sir, I haven't because to do it  
2 properly would be unethical.

3           Q     Right. There are scientific studies that  
4 exist into the phenomenon of positional asphyxia,  
5 right?

6           A     With healthy subjects, yes, sir.

7           Q     Okay. Right. I'm not asking -- I don't  
8 know and I'm not sure if you know what the status of  
9 those individuals are.

10          A     Well, you do so because they explain it.  
11 That's part of the scientific method is to  
12 understand who the subjects are and how research is  
13 conducted.

14          Q     Okay. So you have reviewed the ones where  
15 they used only healthy subjects, right?

16          A     Other than situations in which they use  
17 police reports, yes, sir.

18          Q     Did you, did you refer to any of the  
19 studies into, into in the scientific -- withdraw.  
20 Did you refer to any of the scientific studies  
21 regarding the phenomenon of positional asphyxia in  
22 preparing your report in this case?

23          A     Yes, sir. I reviewed the amicus brief  
24 that we talked about earlier that is probably one of  
25 the better reviews that's been conducted of

1 positional asphyxia.

2 Q So the amicus brief that you submitted is  
3 not actually a scientific study. It's actually an  
4 advocacy piece from a particular person, correct?

5 A Well, but it summarizes, it's -- it's a  
6 summary of the literature. It's a summary which  
7 would be a literature review as opposed to, which  
8 cites the best literature out there.

9 Q Okay. But it was cited in the course of  
10 an advocacy piece?

11 A Yes, sir. It's an amicus brief.

12 Q Right. Have you referred to any  
13 non-advocacy piece directly that is a scientific  
14 study into the phenomenon of positional asphyxia to  
15 formulate your opinions?

16 A Well, I reviewed some of the research that  
17 was cited in the amicus brief. I reviewed some of  
18 the research that is used in other academic surveys  
19 and literature. And I understand, even in the Prude  
20 case we spent a lot of time going over those  
21 studies. And particularly the ones from the doctors  
22 out in San Diego.

23 Q Which study in the amicus brief did you  
24 find most instructive in formulating your opinions?

25 A I would have to go back and review it. I



1 can if you want.

2 Q Did you rely upon one in particular or is  
3 there more than one which you principally relied on  
4 to formulate your opinions?

5 A There was several that I looked at in  
6 great detail and looked at the methods and the  
7 arguments.

8 Q Is it your position that the amicus brief  
9 discloses the methodology?

10 A No. But if you go back to the original  
11 sources you can see -- I use the amicus brief  
12 because it lists probably the more important  
13 studies. They're cited in there. I don't rely on  
14 the amicus brief for anything other than the review  
15 of the literature.

16 Q Okay. Does the amicus brief provide any  
17 contrary studies or criticisms of the studies that  
18 are relied upon?

19 A Well, I think it -- I believe it has  
20 Christine Hall's article listed in there which was  
21 brought up significantly in the George Floyd  
22 criminal trial. Which, which wasn't a scientific  
23 study with original data, but summarized the  
24 Canadian, I think the RCMP experience with  
25 positional asphyxia.

1           Q     Which is a non-scientific piece of  
2 literature?

3           A     No. I think it is scientific. It uses  
4 police reports.

5           Q     Right. But it doesn't, doesn't -- it is  
6 not a scientific study. It is a report on a limited  
7 number of police reports from a limited  
8 jurisdiction?

9           A     All of Canada. And I think it is a  
10 scientific study. We do a lot -- I mean data are,  
11 come in different forms. Some are done with  
12 original data with subjects. Others look at police  
13 reports.

14          Q     But you would agree with me that when it  
15 comes to the subjects involved in those cases, it's  
16 not a controlled group that you would have if you  
17 were doing a stand-alone scientific investigation?

18          A     I disagree with you, sir. I think, I  
19 think it's using -- it's using subjects who are  
20 actually the objects of positional asphyxia. It's a  
21 different, it's not a controlled study where you get  
22 your original subjects. But they're using the  
23 reports that explain when positional asphyxia was  
24 used. I'm sorry. I don't mean asphyxia because  
25 that would infer death. I mean leaving someone on

1 his or her stomach.

2 Q Okay. Let me go back to the question I  
3 started with. Did you consult any, did you directly  
4 consult any scientific study into positional  
5 asphyxia in preparation for this report?

6 A Yeah. I went back through and looked at  
7 some articles.

8 Q Did you cite those articles in the report  
9 as having relied upon them?

10 A No. I used the, the summary that was in  
11 the amicus brief because it was probably one of the  
12 better ones that I had seen. I can -- I also  
13 included in this report the testimony of Dr. Rich,  
14 the video that was embedded in that.

15 Q But these are not your independent  
16 studies. These are, as we agreed upon these are  
17 materials used in an advocacy piece, not an  
18 independent scientific study.

19 A Well, independent scientific studies cite  
20 studies that support the theories for the most part.  
21 A lot of scientific and peer reviewed studies don't  
22 give a totally balanced argument either. They are  
23 trying to explain a point. So your point, I  
24 understand it but, but yeah, I could have cited, I  
25 could have cited an article, you know, that

1 summarizes it the same way Mr. Stoughton did in his  
2 amicus brief.

3 Q And if you were going to do that, which  
4 article would you have sited?

5 A I mean I could cite the one by Alm  
6 Steinberg that called prone restraint, cardiac  
7 arrest and comprehensive review of the scientific  
8 literature and explanation of the physiology.

9 Q Okay. So the Steinberg article. Did you  
10 consult it in formulating your opinions for this  
11 case?

12 A I discussed with Mr. Steinberg his article  
13 before he published it. I was very familiar with  
14 his summary. Did I look at it specifically, I  
15 didn't have to. I knew what his arguments were. I  
16 knew the research he was citing.

17 Q Did you look at his methodology?

18 A Yeah. He reviewed articles. He wrote two  
19 articles. One was a response to I think Kroll and  
20 one was the one that I just mentioned. So he  
21 summarized things. He is the medical doctor. I'm  
22 not.

23 Q Okay. So you relied upon his expertise in  
24 drawing your opinions in this case?

25 A No. I didn't rely on it. I use it as a

1 point of reference. He is an advocate against it.  
2 He is a medical doctor. He argues with Kroll. He  
3 argues with the other San Diego researchers. And  
4 it's just, there's two sides of the argument.

5 My point has nothing to do with the  
6 medical testimony. It has to do with it's common  
7 police practice not to leave someone on his stomach  
8 or her stomach.

9 Q I understand. So let me ask you this. I  
10 heard you to say that the Steinberg article was a  
11 resource that you referred to in the formulation of  
12 your opinions in this case?

13 A No, sir. I said I reviewed it.

14 Q Okay.

15 A I talked to him when he wrote it.

16 Q Okay.

17 A I was familiar with his work. And it's  
18 an -- just as much an advocacy piece against the  
19 Kroll arguments. That's what started him getting  
20 involved in this.

21 Q Okay. So let me ask my question better  
22 because I don't think I did a good job. What  
23 scientific studies did you rely upon in formulating  
24 your opinion?

25 A My background of reading this literature I

1 reviewed some of the, I reviewed the PERF report,  
2 which is probably as close to a national standard  
3 for policing. I reviewed studies that deal with  
4 policies and practices, not the medical literature.  
5 I can't give a medical opinion anyway. We've  
6 already talked about the meat on the head that I  
7 couldn't even pronounce.

8 Q Right. But is it fair to conclude that  
9 your opinions are essentially an aggregate of other  
10 opinions in the field of or in the phenomenon of  
11 positional asphyxia?

12 A In the policing world, yes. My opinions  
13 are summarized by -- well, they were developed by  
14 the research that was done and the fact that as an  
15 accepted police practice to get someone off of his  
16 stomach as soon as possible.

17 Q Right. And I'm just curious because  
18 sometimes policies or accepted practices are based  
19 upon faulty science or based upon materials that are  
20 incomplete or just bad data. And I am curious if  
21 you have done anything to test the science behind  
22 these national standards that have been adopted?

23 A As I mentioned before, I have looked at  
24 the methodologies and have not seen any study done  
25 properly using the kinds of subjects that are, that

1 are put in this case in real life.

2 Q So --

3 A The studies I have seen once again are  
4 using subjects who are healthy.

5 Q So, Dr. Alpert, I understand that, what  
6 you just said to say no, I have not done any  
7 research into the methodology or the accuracy of the  
8 scientific studies behind the adopted policies or  
9 standard.

10 A That's -- no, that's incorrect. I have  
11 studied the methodologies. And the methodologies  
12 are so bad in the research and the medical research  
13 because they're using once again subjects who are  
14 healthy that the policing industry has not accepted  
15 some of the literature that's out there in the  
16 medical journals who has used these healthy  
17 subjects.

18 It has been -- for a long time it has  
19 been a customary police practice once again to  
20 remove someone from his stomach as soon as possible.

21 Q Right. But if it were -- let's just say  
22 this. Okay. If there was a national standard that  
23 said let's sprinkle fairy dust on a subject that is  
24 on the ground and it was adopted and began some  
25 measure of incalculable adoption, but there's no

1 science behind the use of this fairy dust, then the  
2 use of the fairy dust would be suspect, right?

3 A Well, when you say there's no science  
4 behind it, people don't die from the use of fairy  
5 dust. People die from being left on their stomachs.

6 Q Well, no, that's what I'm asking you.  
7 Where is the science that says people die from being  
8 placed on their stomach?

9 A Watch Dr. Rich's testimony --

10 Q Who?

11 A In the Floyd case. Dr. Rich, it's cited  
12 in my report. Watch his testimony in the Floyd  
13 case. It was compelling, it was medical and it was  
14 accepted.

15 Q Okay. And is that the only source for  
16 science that says leaving someone in a prone  
17 position is potentially fatal?

18 A No, sir.

19 Q Okay. Is it the only source upon which  
20 you relied to formulate your opinion in this case?

21 A No, sir.

22 Q What are the other sources? What are the  
23 other scientific sources?

24 A Well, I told you there's a whole history  
25 of literature particularly with the, in the taser



1 research where they tell you to take someone off of  
2 his stomach because the medical -- they believe --  
3 I'm not a medical doctor. But a lot of the medical  
4 doctors say that leaving you on your stomach  
5 compromises your breathing. And yes, there are,  
6 there are medical studies that show that and there  
7 are medical studies that argue against it. And the  
8 law enforcement community over the last several  
9 decades has taken the reasonable approach to say  
10 let's get them off their stomach when reasonable,  
11 when possible and that's been as close to a national  
12 standards as we have.

13 Q Okay. Let me just be real clear and then  
14 I'm going to move on. You're not a medical doctor  
15 and you can't actually offer an opinion on to the  
16 credibility or on to the voracity of the testimony  
17 from Dr. Rich, right? You're not qualified to  
18 criticize it, are you?

19 A I am not qualified to criticize it. Yes,  
20 sir. That's accurate.

21 Q You're not qualified to criticize any  
22 medical study into the phenomenon of positional  
23 asphyxia?

24 A That's not correct. I can criticize the  
25 methodology. I can't criticize the medical issues.

1 Q Okay. Are you competent to criticize  
2 medical opinions regarding the risks of positional  
3 asphyxia?

4 A Not the medical issues. I can certainly  
5 criticize and evaluate and manage the methodologies  
6 used to reach them.

7 Q Okay. And even though the methodologies  
8 may be flawed, it doesn't necessarily mean that the  
9 ultimate conclusions is incorrect. It just means  
10 that the methodology in Floyd was, had some  
11 potential fall?

12 A Well, in this particular case dealing with  
13 healthy subjects you cannot, you cannot generalize  
14 on unhealthy subjects. Yeah, that's a huge flaw.

15 Q Right. But I mean if, if I judge the  
16 strength of a bridge, like the Golden Gate Bridge,  
17 by the taste of a hamburger, that would be a flawed  
18 methodology for determining the strength of the  
19 Golden Gate Bridge. Just because there's a way to  
20 criticize my methodology in concluding that the  
21 bridge is strong, that doesn't necessarily mean that  
22 the bridge isn't strong, right?

23 A You know what, if you want to get into  
24 this argument, what do you mean by strong?

25 Q Is architecturally sound.

1 A For what? For tanks?

2 Q For traffic.

3 A Or cars?

4 Q For --

5 A For a certain --

6 Q Vehicular travel.

7 A For a certain amount of it, yes, sir.

8 Q But my taking of the hamburger wouldn't be  
9 a very good methodology for the conclusion that the  
10 Golden Gate Bridge is architecturally strong enough  
11 to handle pedestrian cars -- pedestrians and  
12 vehicles, right?

13 A As much as I hate to agree with you, I'm  
14 going to agree with you.

15 Q Okay. But that doesn't mean that the,  
16 even though my methodology is flawed, it doesn't  
17 mean that we can't drive on the Golden Gate, right?

18 A That's, yeah, you can actually drive on  
19 the Golden Gate and eat a hamburger.

20 Q What is ground stabilization?

21 A In what context?

22 Q In the context of a law enforcement  
23 tactic.

24 A Well, as I understand it the ground is  
25 used as a friend. It's taught in use of force

1 training and defense tactics training that the  
2 ground is your friend.

3 Q And do you know why it's taught as being  
4 your friend?

5 A Because it provides a surface which is not  
6 pliable. Especially if you're by yourself, it can  
7 provide a way to help control someone.

8 Q And it is commonly taught as a technique  
9 by which officers can control subjects. They can  
10 take the, put the person on the ground and stabilize  
11 them by using the ground as a resistant force?

12 A That's correct.

13 Q Okay. And doing that is not an  
14 unreasonable tactic, is it?

15 A Well, you can't --

16 Q The abstract --

17 A In the abstract, no. It depends on the  
18 situation or condition. But no, it can be, it can  
19 be very helpful.

20 Q All right. I want you to go to page two  
21 of your report.

22 A Yes, sir.

23 Q And if you look at the first paragraph or  
24 second paragraph under incident assessment.

25 A Yes, sir.

1           Q     First of all let me get a couple of things  
2 out of the way. When Officer Lewis arrives on scene  
3 do you have an opinion as to whether or not he had  
4 reasonable suspicion to detain Mr. Rodriguez?

5           A     Well, my understanding is that  
6 Mr. Rodriguez was walking naked down the street. So  
7 certainly has some reasonable suspicion to find out  
8 what is going on.

9           Q     Okay. Would you agree with me that he  
10 also had probable cause of a crime?

11          A     I suppose walking naked is a crime.

12          Q     Generally speaking if I refer to the crime  
13 of indecent exposure.

14          A     Okay. Yes, sir. I would assume walking  
15 naked is a crime of indecent exposure.

16          Q     Okay. Was there -- were there other  
17 objective indicators of possibly illegal narcotics  
18 use?

19          A     Well, when you see someone walking down  
20 the street naked, yeah, you can certainly make  
21 assumptions that there's an issue. The problem is  
22 that you don't know if the person is in -- and the  
23 phrase that I used is mad, bad or sad.

24          Q     Right.

25          A     Something is wrong. Someone may be in

1 crisis. Someone may be whacked out on a drug.  
2 Someone may be having -- you just don't know. But,  
3 yeah, it certainly gives you some indication  
4 something is wrong.

5 Q The question I asked was was there  
6 objective indicators that he might be under the  
7 influence of illegal drugs?

8 A Certainly a suspicion.

9 Q Sure. Which would also be reasonable  
10 suspicion of potential possession of illegal drugs,  
11 correct?

12 A Not if he's naked.

13 Q Well, if his clothes were laying in the  
14 grass with his wallet inside and a bag of LCD inside  
15 of it, that would be probable cause for possession,  
16 right?

17 A Well, if they knew there was a bag of LSD,  
18 yes, sir.

19 Q Right. I'm just creating a hypothetical.  
20 I'm not saying that those are necessarily the facts,  
21 but you know how law enforcement investigations  
22 should go and that's the natural progression that  
23 one might follow, correct?

24 A Well, your hypothetical had a bag of LSD  
25 in it so absolutely that would give you some

1 reasonable suspicion of probable cause.

2 Q Right. And my hypothetical advanced  
3 through seeing this individual and drawing the  
4 conclusion that they may have been under the  
5 influence of an illegal drug.

6 A As I said, he could be mad, bad or sad.  
7 It raises suspicion for everything. Normally you  
8 don't find a person at 10:00 at night walking down  
9 the street naked.

10 Q That's right. And you would also concede  
11 that because there was reasonable suspicion,  
12 probable cause actually, that Officer Lewis had the  
13 lawful authority to command him to a specific  
14 location and restrain him, detain him?

15 A Well, I'm not going to give a legal  
16 opinion, but in terms of a customary police  
17 practice, yes, sir.

18 Q Okay. If you were training an officer in  
19 a class and this were the hypothetical, you would --  
20 and an officer in training ask you do I have the  
21 authority to detain Mr. Fernando, Mr. Rodriguez,  
22 your answer would be yes, correct?

23 A Again, I wouldn't, I wouldn't give him a  
24 legal opinion, but as a customary police practice,  
25 yes, sir.

1 Q What is a customary police practice?

2 A It's something that a reasonable officer  
3 would do under the circumstances.

4 Q Are there customary police practices that  
5 are not found based in law?

6 A Well, I'm not a lawyer. I can't give  
7 those opinions. I can give the opinion that this is  
8 a customary police practice.

9 Q But you're also an adjunct professor at  
10 the law school there at South Carolina.

11 A Yes, I am.

12 Q Okay. And so I'm asking you are you aware  
13 of any lawful practice or any -- I'm sorry. Any law  
14 enforcement practice that is not based in some  
15 authority in law?

16 A There are a lot of law enforcement  
17 practices that are not based in and established and  
18 accepted laws. I mean we see qualified immunity  
19 cases all the time. The courts are saying this  
20 isn't a good idea, but there's not, there's not  
21 established law.

22 Q They say that it's unconstitutional, but  
23 it's never been held unconstitutional, right?

24 A There you go.

25 Q That's right. And in this case the police



1 practice of detaining someone who is naked and  
2 walking down the street, you're offering no opinion  
3 about whether or not that was lawful or not?

4 A I think it's something that since we  
5 walked through it and he has now committed the  
6 offense of, what do you call it?

7 Q Let's just call it indecent exposure.

8 A Indecent exposure, well, yeah, that's a  
9 crime. And that certainly gives the officer the  
10 ability to take him into custody.

11 Q And it can be disorderly conduct or  
12 anything like that. I mean there's probably  
13 multiple crimes at issue here. But I want you to  
14 make the assumption that Georgia has a criminal  
15 offense for which Mr. Rodriguez's conduct satisfies  
16 probable cause for. Okay?

17 A Yes, sir.

18 Q Okay. And it's your opinion that based  
19 upon that, Officer Lewis had the authority to detain  
20 him, correct?

21 A Yes, sir.

22 Q And you would agree with me that Officer  
23 Lewis had the authority to give him commands to  
24 effectuate that detention?

25 A Yes, sir.

1           Q     Okay. And Officer Lewis also had legal  
2 authority to physically detain him if Mr. Rodriguez  
3 did not voluntarily comply?

4           A     Well, I think he can use a minimal amount  
5 of force if necessary, yes, sir.

6           Q     A minimal amount of force or the amount of  
7 force necessary?

8           A     Well, let's be more specific. A  
9 reasonable amount of force.

10          Q     But a reasonable amount of force is going  
11 to be commensurate with the oppositional force by  
12 the subject; is that not correct?

13          A     That's certainly part of it. My  
14 understanding was that Mr., Mr. Rodriguez was not a  
15 threat, was not -- he was not compliant, but he  
16 wasn't resisting at any point.

17          Q     So you would agree that Officer Lewis  
18 wouldn't -- the use of a firearm would probably be  
19 more force than was necessary, yes?

20          A     Not probably. Would absolutely be more  
21 force. If he is walking away from you not being  
22 compliant I think, I think the Tennessee v. Garner  
23 explained that you can't shoot a meandering  
24 misdemeanor.

25          Q     Right. And you would agree with me that

1 they didn't in fact shoot him, right?

2 A Well, they shot him with a taser.

3 Q Right. But they didn't use a firearm to  
4 shoot him?

5 A They did not use a firearm.

6 Q I never saw any closed-fist strikes. Do  
7 you think that closed-fist strikes would have been  
8 justified on Mr. Rodriguez?

9 A At what point in time? Certainly not when  
10 he's walking away.

11 Q At any point in time?

12 A I mean the guy kicked him in the face. So  
13 I'm not sure -- I think I probably rather be hit  
14 than kicked. But I don't think the kick was  
15 certainly justified and I don't think a hit would be  
16 justified there either. I think the point is to get  
17 him into custody as quickly and with the least  
18 amount of force necessary.

19 Q Okay. Well, let's do it this way. The  
20 minimal amount of force is going to be officers  
21 presence, right?

22 A Well, the minimal amount of force used  
23 starts with officer presence. The minimal amount of  
24 force necessary to take him into custody at this  
25 point may be a little more because he's not

1 responding.

2 Q Okay. So in this case Officer Lewis was  
3 present and announced himself?

4 A I think he, I think he -- yeah, he did.  
5 My understanding was he -- I don't remember him  
6 announcing himself. My understanding of the facts  
7 was that they basically told him to get on the  
8 ground or something to that effect and Mr. Rodriguez  
9 just continued to walk away.

10 Q Announcement is basically identification  
11 of law enforcement authority, correct?

12 A Yes, sir.

13 Q Okay. And if he's wearing a uniform, you  
14 would agree with me that in common or in law  
15 enforcement parlance, that would be considered he  
16 is identified and announced himself as having legal  
17 authority to make it --

18 A If a person can see him and can  
19 understand, yes, sir. But we don't know that. The  
20 guy is obviously in crisis. He is walking down the  
21 street naked.

22 Q He did the things that most, the common  
23 practices that law enforcement officers use for  
24 identification. He was wearing the uniform and he  
25 presented himself, correct?

1           A     As a first step, yes, sir.

2           Q     Okay. And in your report you indicate  
3 that Officer Lewis yelled at him to get on the  
4 ground.

5           A     Yes, sir.

6           Q     And when you use the word yell, I think  
7 you intentionally use that for, to connote something  
8 negative or sinister. But really what it means is  
9 that he was loud, correct?

10          A     Well, yes, sir. And I didn't use it to be  
11 sinister. I used it in contradiction to what is  
12 normally done to try to diffuse a situation or what  
13 is taught in crisis intervention courses where you  
14 try to, you try to have a conversation as opposed to  
15 yelling and being loud.

16          Q     Right. But you would agree with me that  
17 given the circumstances and the behavior, it would  
18 not be unreasonable to loudly order someone to get  
19 on the ground?

20          A     Well, unfortunately you see it more often  
21 than not. But it certainly would be a preference to  
22 try to deescalate, try to understand, try to have a  
23 conversation. It may work, it may not work. But  
24 when you start yelling and screaming, you are  
25 escalating, not deescalating. And that's why I used

1 the word yell.

2 Q Okay. But if he whispered, you would be  
3 critical of him not being loud enough, correct?

4 A Yeah. If he whispered it probably  
5 wouldn't have any impact.

6 Q Right. And at some distance being loud  
7 would be something that was objectively reasonable?

8 A Well, again, I think you can get away with  
9 it because -- but in what we're seeing in police  
10 practice and even in 2019 is to try to deescalate,  
11 try to understand a person in crisis, his or her  
12 response. And to try to have a conversation is  
13 certainly better than yelling.

14 Q Okay. And would you agree with me that he  
15 had the discretion and the lawful authority to order  
16 Rodriguez to the ground?

17 A Yes, sir.

18 Q Okay. You would agree with me that when  
19 he, according to your report, threatened to fire his  
20 taser at him, that would -- another way to say that  
21 is that he warned him that noncompliance would  
22 result in use of the taser, yes?

23 A I mean, yeah, that's kind of a complicated  
24 way to say it, but yes, sir.

25 Q Okay. I mean I have seen lots of reports

1 where experts criticize law enforcement for not  
2 warning pre-taser deployment.

3 A Well, most policies or I should say good  
4 policies if possible require you to give a warning.

5 Q Right. So threatening him is one verb.  
6 Warning him is another verb.

7 A Well, but you're missing again the context  
8 here when you threaten someone and say if you don't  
9 do this I am going to do this. And the person  
10 either doesn't understand it or doesn't care, isn't  
11 listening, is somewhere off in space, and keeps  
12 walking.

13 Q Right.

14 A All the sudden he gets hit with 50,000  
15 volts of electricity.

16 Q Well, warning Mr. Rodriguez prior to the  
17 deployment of the taser would have been consistent  
18 with the nationally accepted practice, correct?

19 A If, if you are justified in using your  
20 non -- your less-lethal weapon, yes, sir.

21 Q Okay.

22 A I don't see where the first thing you do  
23 on a continuum of force or any type of force wheel  
24 using your taser is reasonable.

25 Q Okay. After Lewis ordered Rodriguez to

1 the ground, did he go to the ground?

2 A No. He kept walking. That's when he got  
3 hit with the electricity.

4 Q Right. And then he announced the warning  
5 and then he was tasered, correct?

6 A Correct.

7 Q Okay. And at that point Rodriguez does go  
8 to the ground?

9 A Face plants on the ground, yes, sir.

10 Q Right. What does NMI mean?

11 A NMI?

12 Q Yeah. Neuromuscular --

13 A Incapacitation.

14 Q Incapacitation?

15 A Yes, sir.

16 Q Okay. Did you see evidence of NMI on the  
17 video?

18 A It's interesting you bring that up and the  
19 answer is yes. And I can't, I would have to go back  
20 and look at the report. But oh, gosh. Who was it.  
21 I don't remember which officer was explaining that  
22 he said that the taser didn't fully work because  
23 after the five seconds Mr. Rodriguez, Mr. Rodriguez  
24 went, started responding again. Well, having been  
25 tased before and anyone who's been through the



1 training realizes that once that five-second ride is  
2 over, you're just pissed off. You're back to  
3 normal. Sometimes you're very angry.

4 Q Dr. Alpert, who did you fight after you  
5 were tased?

6 A Who did I fight?

7 Q Yeah. You said you been tased and --

8 A I have.

9 Q Huh?

10 A Absolutely I was. I was both tased with  
11 the, with the cartridge and with the little prong  
12 thing.

13 Q I bet when you were tased you were ready  
14 to comply with anybody who was holding the other end  
15 of that taser?

16 A I mean it was kind of an interesting  
17 experience. I was in training so I wasn't angry. I  
18 wasn't upset. I wasn't mad, bad or sad. I was just  
19 realizing I just got shocked.

20 Q And probably willing to comply with any  
21 orders that you were given by the person holding the  
22 taser?

23 A And if I ever see a red dot on my chest,  
24 I'm the first one to raise my hands.

25 Q Nobody wants to ride that chair twice,

1 right?

2 A No, sir.

3 Q Okay.

4 A I shouldn't say that. I would say if  
5 you're in a normal situation you sure don't. Some  
6 people seem to like to fight it.

7 Q What command came after the taser  
8 deployment? Do you recall?

9 A The, what I recall is the command to roll  
10 over because he was on his back. Roll over on his  
11 stomach. And when he didn't, he got tased again.

12 Q You're telling me that he complied with  
13 the order to roll to his stomach?

14 A No, he did not. And that's when he got  
15 tased again.

16 Q Okay. Do you have any information or are  
17 you aware of any evidence that at the moment that he  
18 refused to comply to roll over, that he was laboring  
19 under NMI?

20 A No. My understanding is that after the  
21 five-second ride, which we all have experienced if  
22 we have been tased, is the NMI, the incapacitation  
23 is over. And that's the design of the taser.

24 Q Right. So it's not your testimony that  
25 Mr. Rodriguez was incapable because of the taser to

1 roll over?

2 A Well, look, I can't speak again to, to  
3 Mr. Rodriguez and his condition. Normally you,  
4 after the five seconds, you know -- actually there  
5 has been research that some people it takes a while  
6 after a five-second ride to even comprehend what the  
7 order is. The research was specifically on Miranda  
8 that the conclusion was that some people after the  
9 five-second ride takes a few seconds to kind of  
10 revert back.

11 But look, in all ways, shapes and  
12 forms what we are seeing here is a lazy cop  
13 syndrome. You know, the using a taser too early and  
14 too often, not relying on any kind of communication  
15 skills or hands-on. You just go right to a less,  
16 less lethal weapon. And that's where I have my  
17 problem.

18 Q Prior to the deployment of the taser a  
19 second time, was Mr. Rodriguez given a lawful  
20 command to roll over?

21 A That's an interesting question. A lawful  
22 command. I suppose it's lawful, yes, sir. It's not  
23 maybe the smartest thing to do, but it's certainly a  
24 lawful command. Most officers who are trained in  
25 the use of a taser are also trained to cuff under

1 power, which these guys did not do.

2 Q When you say cuff under power, you mean go  
3 hands-on, right?

4 A No. I mean while he's in his  
5 neuromuscular incapacity to handcuff him.

6 Q You're telling me that while he is being  
7 tased he should be, that officers should risk going  
8 hands-on with him?

9 A Going hands-on he can't control his --  
10 that's the point of incapacitation. They have got a  
11 window where they can handcuff him while --

12 Q While he's being electrocuted and risk  
13 being hit by the taser wires themselves?

14 A Well, you know, when I was tased these  
15 guys were, they were holding me up by my, by my arms  
16 and elbows. They weren't in any danger of being  
17 shocked. And if you're tased in, if you're tased in  
18 the back, you just grab the arms and you, you  
19 handcuff him. You have to be touched by both wires  
20 before you're going to have a problem.

21 Q That's part of the reason they yelled  
22 taser, taser, taser is for law enforcement to clear  
23 prior to deployment, yes?

24 A Yeah. And then they go in and handcuff  
25 them under power. That's the training.

1 Q After the taser is stopped at cycle?

2 A No, sir. Cuffed under power means under  
3 power.

4 Q Okay. He never complied with the roll  
5 over command, right?

6 A That's correct.

7 Q Okay. He was warned you're going to get  
8 it again, correct?

9 A Give it to him again is the language.

10 Q Right. But then around 10:13 you say he  
11 attempted to sit up and he was warned you're going  
12 to get it again.

13 A Correct.

14 Q Is that correct?

15 A Yes, sir.

16 Q All right. And he had been told to get on  
17 his stomach, correct?

18 A Yes, sir.

19 Q Okay. Did you see him endeavor to get on  
20 his stomach after being warned this time you're  
21 going to get it again?

22 A No, sir. I have no idea if he understood  
23 what the command was. I don't know if he -- I  
24 assume he heard it, but I don't know if he could  
25 comprehend it.

1 Q Mr. Rodriguez --

2 A Just walking down the street -- this man  
3 is walking down the street naked, how do you assume  
4 he can hear and comply with these commands?

5 Q Mr. Rodriguez is screaming and yelling at  
6 the police officers, right?

7 A Well, yeah, if you get tased.

8 Q And he did so in English, correct?

9 A Yes, sir.

10 Q Okay. Is there any indication that he  
11 could not hear them?

12 A I mean you don't know. There's no  
13 indication that he did or didn't hear them. But  
14 when you start yelling and giving orders and  
15 basically if then commands, there's just different  
16 ways to handle it. And none of that was used.

17 Q After the fourth deployment, this is when  
18 Rodriguez goes backwards, falls backwards. Stroud  
19 orders Rodriguez to roll on his stomach yet again?

20 A Yes, sir. You're going to keep getting  
21 tased I think is the language.

22 Q Compliance, comply or you will continue to  
23 be tased, correct?

24 A Yes, sir.

25 Q Okay. He also tells him roll over so we

1 can get you an ambulance or something, correct?

2 A Yep. That is in my report.

3 Q And how do you, what do you interpret that  
4 statement to mean?

5 A Well, I mean it could be a lot of things.  
6 It could mean that I'm not going to get you any help  
7 until you do what I tell you. That's one way,  
8 certainly the first thing I thought, you know.

9 Q And you would agree it would not be, it  
10 would not be tactically sound to send in medical  
11 personnel on somebody who is noncompliant, naked?

12 A I would assume medical personnel wouldn't  
13 do anything.

14 Q Right. So getting him controlled is a, is  
15 a prerequisite, is a precursor getting him medical  
16 care, correct?

17 A I totally agree that getting him  
18 controlled is an important goal.

19 Q And it must happen before he can be  
20 treated?

21 A Oh, yes, sir.

22 Q Okay.

23 A I mean unless -- let me rephrase that. If  
24 you're in, if you're in a -- some areas actually can  
25 go in and use medicine while, you know, if officers

1 are holding him down before he is handcuffed. But  
2 no, for the most part yeah. Well, he has to be  
3 controlled, yes, sir.

4 Q And this point he is not handcuffed and  
5 he's not under control?

6 A Well, that's, that's another one of my  
7 points is there a couple of officers and this is  
8 right before I think Bowlden comes in. And when you  
9 start getting multiple officers, yeah, why wouldn't  
10 you go hands-on. I mean I know why. They have even  
11 admitted. I can't remember, I think it was Bowlden  
12 kept calling him a sweating little hog. He didn't  
13 want to touch him.

14 Q Would you agree with me that, I mean I  
15 have been doing this for 22 years. You have been  
16 doing it for a really long time. Fighting with  
17 somebody who's naked and sweaty is a recipe for  
18 injury?

19 A Well, it's disgusting. No one likes it.

20 Q Right. But it's also physically  
21 difficult, challenging.

22 A Well, someone who is sweaty and yeah,  
23 absolutely it's difficult. That's why you have  
24 multiple officers.

25 Q You have no way to grab, grasp someone



1 because your hands will slip off their skin,  
2 correct?

3 A Having wrestled for many years, that's the  
4 trick, yes, sir.

5 Q Yeah. You guys would lather up with baby  
6 oil.

7 A That's when we were playing rugby.

8 Q After the fourth time and he's told that  
9 he's going to get an ambulance, right? He provides  
10 an incentive for compliance beyond pain compliance?

11 A Well, I -- let's back up for a minute  
12 because I have in my report that Henry County  
13 Officer Bowlden kicked Fernando with his foot and  
14 asked can you hear me so I don't know --

15 Q Bowlden is a not, Bowlden is not a Henry  
16 County officer.

17 A Okay. You're right. I'm sorry.

18 Q That's okay.

19 A But Bowlden said, Bowlden is, either is  
20 being very vindictive or trying to figure out if  
21 Rodriguez can even hear him.

22 Q And I know you use the word kick, but  
23 would it -- do you know, did you observe him strike  
24 him for compliance with his foot?

25 A No.

1           Q     Okay. So if he says he is kicking him, it  
2     may be, you know, when I fall asleep on the floor at  
3     night, my wife comes by and nudges me with her foot,  
4     get up. We don't know to what extent and what  
5     amount of force was applied.

6           A     Right. I wasn't really criticizing the  
7     force as much as I was criticizing or commenting on  
8     the fact that maybe this guy is trying to figure out  
9     that Rodriguez can't hear him or can't understand  
10    him.

11          Q     Right. Back to the original question. By  
12    offering the ambulance, he is offering a  
13    noncompliance -- a non-pain compliance incentive for  
14    Mr. Rodriguez, right?

15          A     Yes, sir.

16          Q     Okay. And you would applaud that?

17          A     Well, yeah. And assuming if Mr. Rodriguez  
18    understood it, it would be a little bit better.  
19    But.

20          Q     Has anyone told you that Mr. Rodriguez  
21    could not understand English?

22          A     Well, it's not English. The guy, the guy,  
23    again --

24          Q     I'm going to go through the litany of  
25    things. I'm going to go through the litany of

1 things. Has anyone told you that Mr. Rodriguez had  
2 any form of hearing impairment?

3 A No, sir.

4 Q Okay. And so there's nothing sort of that  
5 these officers have objectively presented to them to  
6 say this guy can't hear versus this guy is just not  
7 complying?

8 A Well, the middle ground is he is hearing,  
9 not understanding what we want him to do. He is not  
10 processing the words that he is hearing.

11 Q But there's nothing to indicate that he  
12 had any -- that it was that versus blatant  
13 noncompliance?

14 A Except the fact that he is walking down  
15 the street naked and they already made this  
16 determination that there's something wrong, he is  
17 either in crisis or again mad, bad or sad.

18 Q Right. After, after he's incentivized  
19 based on medical care and he doesn't comply, he's  
20 told that he needs to roll onto his stomach so they  
21 can handcuff him, right?

22 A Well, I'm not exactly sure where we are,  
23 but he's also --

24 Q Again, good point. I'm on the second --  
25 the first full paragraph of page three of your

1 report.

2 A Okay. Yeah. And that's when Bowlden  
3 comes in and Lewis told him I done tased him about  
4 three times.

5 Q What did Mr. Rodriguez do when Bowlden  
6 asked him can you hear me?

7 A I don't think he responded.

8 Q At that point Lewis screamed, and when you  
9 say screamed, what you mean is his voice was loud?

10 A Yes, sir.

11 Q You're going to get it again, right? This  
12 is moving into the second full paragraph.

13 A Correct.

14 Q Okay. And again incentivizes compliance  
15 with I will get you an ambulance, right?

16 A Yes, sir.

17 Q You're going to get it again is followed  
18 up with, right?

19 A Yes, sir.

20 Q So this is sort of a carrot-and-a-stick  
21 approach to compliance at this point, right?

22 A It is.

23 Q Okay. They tried to flip him on his  
24 stomach at this point, correct?

25 A Correct.

1           Q     Even though they warned him that he was  
2 going to get it again, in between 10:15 and 10:16  
3 they did not tase him at -- even though they warned  
4 him repeatedly that they were going to?

5           A     Yes. They gave him a whole half a minute  
6 I think.

7           Q     Which is plenty enough time for  
8 compliance?

9           A     Absolutely. If he understood, number one  
10 and then was able to comprehend and wanted to comply  
11 he could have. Yes, sir.

12          Q     And it was only after they had given him  
13 these repeated threats, warnings that were not  
14 followed through and interpose offers of incentive  
15 that they then deployed the taser for the fifth  
16 time?

17          A     Yeah. And called him a sweaty little hog.  
18 So who knows if he understood that. He might not  
19 have even been offended.

20          Q     Are you drawing -- I mean is that a  
21 significant point in your opinion sweaty little hog?  
22 I mean I know it's un -- it's not something someone  
23 in sort of, you know --

24          A     It's not professional.

25          Q     It's not professional, right. You

1 wouldn't want it. But you understand, and I'm sure  
2 you have even done it yourself, where under stress  
3 maybe playing rugby you uttered things because of  
4 frustration?

5 A Well, the culture of a rugby game is a lot  
6 different so yes, sir. But my point though is  
7 rather than go to an alternative, I mean I don't, I  
8 criticize the fact that they tased him, what, three  
9 times already instead of going hands-on because they  
10 don't want to touch him because he is sweating and  
11 yeah, it is a little harder. But I guess they tased  
12 him four times because once you keep tasing someone,  
13 if it doesn't work, it's not going to start working  
14 after the fifth or tenth time.

15 Q Right. After the fifth round of  
16 electricity -- and what do you mean when you say  
17 fifth round?

18 A It was the fifth deployment.

19 Q Fifth five-second deployment?

20 A I don't even know if they're all  
21 five-second deployments or just the fifth  
22 deployment.

23 Q Have you been trained to listen to -- have  
24 you ever been certified to use a taser?

25 A I have gone through the training. I have

1 no reason to be certified. I can carry one on the  
2 streets.

3 Q Right. Right. But it would be a  
4 responsible practice, probably one that would be  
5 nationally accepted for you to receive that training  
6 before carrying such a dangerous weapon?

7 A Most states -- it's not -- most states  
8 don't require that.

9 Q Right.

10 A But I have --

11 Q But there are some states that, and some  
12 people who have offered the opinion like in the  
13 Rolfe case that a taser can be a deadly weapon or  
14 not a deadly weapon, right?

15 A Well, it went from nonlethal to less  
16 lethal, yes, sir.

17 Q But when you went through your training,  
18 did you hear anything about listening to what the  
19 taser sounds like as it is discharging?

20 A Yes, sir. The X-2s that these officers  
21 had, it's not as easy. I know exactly what you're  
22 talking about. Now of course they have the software  
23 will tell you when contact has been made. But you  
24 can hear a difference if you have a really sharp  
25 ear, yes, sir.

1 Q And what does that sound like when you  
2 don't have contact?

3 A It's more of a, I think it's a harsher  
4 clicking noise.

5 Q Right. Did you hear at any point in the  
6 video that you watched any noise that you identified  
7 as being noncontact or non-good contact?

8 A Well, sir, I answered your question a few  
9 minutes ago saying I don't know if they were all  
10 five-second rides because there were times where I  
11 was -- I couldn't -- I tried to slow it down and  
12 tried to figure it out and then I gave up because I  
13 couldn't.

14 Q Okay.

15 A So certainly it's possible that the  
16 contact wasn't for the full five seconds. I don't  
17 know the answer.

18 Q Would it be fair to analogize a noncontact  
19 deployment of the taser with a gunshot that misses a  
20 target?

21 A A noncontact, yes, sir. But a partial  
22 contact, no, sir.

23 Q Okay. And if you were -- because these  
24 X-2s don't have information, is it your testimony  
25 that the X-2s don't have information indicating



1 whether good contact has been made or not?

2 A I believe that's accurate, yes, sir.

3 Q Okay. Who would you ask if you wanted to  
4 know whether or not good contact was made in this  
5 situation?

6 A Well, I mean the best person would be the  
7 subject of the tasing. I don't know the -- these  
8 officers weren't trained very well in the use of the  
9 taser or they wouldn't have tased him all these  
10 times. So I don't --

11 Q When I talked to these officers they've  
12 apparently been trained in the same way that you  
13 have because they knew to listen for a specific  
14 clicking sound to indicate noncontact.

15 A Okay.

16 Q Okay. So if they testified that they had  
17 been trained to listen for a specific clicking sound  
18 for noncontact and they heard that clicking sound in  
19 the use of the taser in this case, you would have no  
20 reason to disagree with them, right?

21 A Well, I can't speak to the voracity of any  
22 witness, no, sir.

23 Q Right. Right. But you don't have any  
24 evidence, you're not aware of any evidence that  
25 would be contrary to their affirmative statements of

1 noncontact?

2 A Well, I think we can hear, we can get the  
3 sound enhanced perhaps and figure out how many  
4 seconds of electricity went through his body. I  
5 don't think I can do it listening to the videos as I  
6 have them.

7 Q So short of enhancing the sound, the best  
8 source of information about noncontact would be the  
9 officer, right?

10 A Well, it would be one source, yes, sir.

11 Q At this point it's the only source that  
12 we're aware of, right?

13 A Other than the sound that is recorded,  
14 yes, sir.

15 Q Okay. And you just testified that you --  
16 based on the current condition of the audio, you  
17 can't tell anything?

18 A I can't tell anything.

19 Q Okay.

20 A You know, perhaps someone who's a lot  
21 better trained in and has a lot more experience in  
22 listening to them could.

23 Q Okay.

24 THE COURT REPORTER: Mr. Morris.

25 MR. MORRIS: You want to take a break?

1 THE COURT REPORTER: Do you mind?

2 MR. MORRIS: I do not.

3 (Whereupon a recess was taken.)

4 BY MR. MORRIS:

5 Q We are back on the record. All the same  
6 ground rules apply. You are under oath and you  
7 recognize that, Mr. Alpert -- Dr. Alpert, right?

8 A Yes, sir.

9 Q Okay. Real quick I wanted to go back to  
10 something. A minute ago earlier you testified that  
11 you could not ethically test subjects based on  
12 positional asphyxia because of the people who would  
13 be used as subjects would possibly have heart  
14 problems or be obese or under the influence of  
15 drugs, blah, blah, blah. Was that, did I understand  
16 your testimony correctly?

17 A Well, you can't ethically use subjects who  
18 are compromised, correct.

19 Q Okay. So how does being -- so what if you  
20 used healthy subjects to test, right?

21 A Yes, sir. And a lot of researches, all  
22 the researches use healthy subjects.

23 Q Right. So how, how would the results --  
24 well, let me ask you this. Let's go back. What is  
25 your understanding of what positional asphyxia is?

1           A       Well, it compromises your breathing. And  
2       according -- the theories have been that it  
3       compromises your ability to breathe in. More  
4       recently the research has shown according to  
5       Dr. Rich and others that it's not so much breathing  
6       in, but it's exhaling and trapping the poisonous  
7       gases in your lungs that kills you.

8           Q       Okay. So what you're saying is that  
9       positional asphyxia is the compromise of the  
10      inhalation and exhalation of gases from the lungs?

11          A       Well --

12          Q       It's --

13          A       It's, think of SIDS. I mean we use to not  
14      put babies on their backs. Or we use to put them on  
15      their stomachs. The medical profession told us no,  
16      that's not smart, babies die. So now there are  
17      these techniques where you keep them on their side  
18      or on their back. And it's no different than humans  
19      who are compromised.

20          Q       Did you know that Covid therapy includes  
21      placing affected subjects on their stomach to  
22      enhance their ability to breathe?

23          A       No, sir.

24          Q       It's a common therapy.

25          A       I hope I never have to experience.

1           Q     I hope you don't either. Let me ask you  
2     this. Just clarification. What I understand you to  
3     be saying is that positional asphyxia involves a  
4     restriction or retardation of the ability to inhale  
5     and/or exhale in order to oxygenate the blood. Is  
6     that what I understand?

7           A     My understanding, and again I'm not a  
8     doctor. I'm just telling you that because of this  
9     information and it doesn't harm the police function,  
10    the standard police practice has been to remove  
11    someone from his stomach or her stomach as quickly  
12    as possible. My understanding is that the two  
13    theories is you couldn't breathe in and that's what  
14    killed you. And then that's kind of moved to you  
15    can't exhale and that's what kills you.

16                    So why take a chance with any of it.  
17    Move them off their stomach when, when it's  
18    reasonable. When it's possible.

19           Q     Let me ask you this. Because I want to  
20    understand this. How would, how would -- well, do  
21    you know how these tests have been done,  
22    administered and these studies by Dr. Kroll and  
23    others?

24           A     Well, they put weights on your back. They  
25    try to compromise -- they make you run. They get

1 your blood pressure and, you know, they get you in  
2 an exercise mode. And then they do these different  
3 tests on you. And they, they say that these tests  
4 don't impact you very much, if at all.

5 Q And so your criticism is that well, if you  
6 take someone -- those are not fair subjects to test  
7 because they're different than an obese person or  
8 someone who's under the influence of drugs? But  
9 here's my struggle with that. And I want you to  
10 answer this particular question.

11 How does me being obese or me being  
12 under the influence of drugs physiologically change  
13 how I will respond to weight being put on my back?

14 A Okay. Number one, I'm not a medical  
15 doctor. I am relating the customary police  
16 practice.

17 Q Uh-huh.

18 A We're talking apples and oranges. To  
19 answer your question my understanding from the  
20 literature that I have read is that when you have  
21 these different -- if you smoke a lot you're going  
22 to have a compromised lungs. If you are obese,  
23 you're going to have compromised systems. So  
24 anything that -- now, look, if a cop is dealing with  
25 an Air Force cadet or a, some athlete, probably

1 isn't going to make any difference. But if a cop is  
2 dealing with someone who is compromised, either by  
3 these other conditions, it just raises a risk that  
4 it's unreasonable.

5 Q Okay. But if the position is what  
6 compromises the lungs, it should compromise a  
7 healthy person in the same way it would compromise  
8 an unhealthy person, would it not? It's just a  
9 matter of physics.

10 A Well, no, that's not true at all because  
11 your lungs function differently. I mean I'm a lot  
12 older than you. My lungs probably function  
13 differently than yours. I never smoked a cigarette.  
14 Maybe they're more healthy. I don't know. But  
15 there are differences.

16 But I'm not going to argue the  
17 medical issues. I have -- I couldn't give a medical  
18 opinion anywhere, particularly in the court. All  
19 I'm saying is that because of this research, the  
20 common police practice has been to be safe and move  
21 someone off of his or her stomach at the first time  
22 it's possible.

23 Q And that kind of gets me to the point I  
24 was trying to make earlier. The practice is the  
25 practice and you're here to testify as to the

1 practice. But you have no idea whether or not the  
2 motivating purpose behind or the motivating science  
3 or lack thereof is sound?

4 A I am --

5 Q You can't offer an opinion on that?

6 A I'm not a medical doctor, but I can tell  
7 you the methods of using a different sample from  
8 what the police are going to use, it compromises the  
9 generalized ability.

10 Q Okay. And that's sort of, that's a  
11 laymen's criticism. That is not a part --

12 A No, not at all. No, sir. I'm sorry to  
13 interrupt. It is not a laymen's criticism at all.  
14 It's one of my areas of specialization is research,  
15 methodology and statistics.

16 So we are very careful, you know. We  
17 don't, we don't run tests or we don't use -- for  
18 example, if we do surveys with students, can we  
19 interfere that that's what the public thinks? No.  
20 We can interfere that's what students think, not  
21 what general public. College students have a lot of  
22 differences. They are very limited in age for  
23 example.

24 So we can use subjects who are  
25 college students, but we can't generalize to the



1 real world.

2 Q Right. But you're not -- you're not  
3 competent to criticize the medical conclusions drawn  
4 by Dr. Kroll, right?

5 A I am not a medical doctor. I don't  
6 understand the, how the lungs work. I don't  
7 understand how those intricate details work inside  
8 of the human being. No, sir. But I certainly can  
9 talk about the methods used in terms of subjects.

10 Q Okay. Sort of what's been popularly  
11 adopted?

12 A I have no idea what that means. I can  
13 tell you in terms of police practice, yeah.

14 Q Yeah, in the terms of police practice.

15 A And the standards from the IACP, from PERF  
16 and these other organizations, yes, sir.

17 Q Okay. And were you a part of the bodies  
18 that, like are you a member of PERF that accepted or  
19 adopted these?

20 A I was at both the 2006 and 2011 meetings,  
21 yes, sir.

22 Q Okay. And so you were a part of the group  
23 that recommended removing from prone positions as a  
24 standard?

25 A I attended the meetings. All we did was

1 suggest to the PERF people. Yes, sir.

2 Q So you made a recommendation to the PERF  
3 organization?

4 A I didn't make a recommendation, no, sir.

5 Q What did you do when you attended? I  
6 don't know what that means.

7 A Well, we had a three or four day meeting  
8 where police -- there were several academics and we  
9 were there for the methodological questions. Mostly  
10 there were police chiefs from all over the world who  
11 came in and explained the best practice, if you  
12 will, and that's what was summarized in both the  
13 PERF documents.

14 Q Okay. And did you play any formal role in  
15 the recommendation?

16 A No, sir. I was there again as one of the  
17 few academics. Mostly it was police chiefs and  
18 trainers who were explaining what they did and what  
19 was acceptable. A couple of academics were there  
20 who had done research and were kind of making sure  
21 that what was talked about was, had methodological  
22 rigor.

23 Q Okay. And it's your opinion that those,  
24 those met sufficient scientific rigor?

25 A Well, what -- the research and really

1 before 2011 there hadn't been that much. What had  
2 been done was pretty interesting. We were there to  
3 kind of listen to the police chiefs because they  
4 were the ones that were explaining what they did and  
5 what they didn't do, their subjects had problems and  
6 died. So it was really more of a police practice  
7 than anything else. There were a couple of medical  
8 doctors. I don't know if Kroll was there or not.  
9 But I know TASER was represented by a couple of  
10 people and some medical doctors.

11 And what came out of that meeting is  
12 what you see in the 2006 and 2011 documents.

13 Q Okay. And forgive me if I'm just being  
14 thick about this because I don't understand. How  
15 does it become the recommendation? Does the PERF  
16 board adopt it formally?

17 A You know, it's just like IECP, there's a  
18 policy committee that formally adopts it and PERF, I  
19 don't know who makes that formal adoption. I don't  
20 know what the executive director does or whom he  
21 asks. But after the meetings we saw the draft and  
22 it went around to everyone who is there and the edit  
23 was made and it was published.

24 Q Okay. Do you receive any money from PERF?

25 A No. Well, I receive money when I work on

1 projects, yes, sir. But not for just being a nice  
2 guy. On the research board, we don't get  
3 compensated for being on the research board.

4 Q Have you been compensated by PERF in any  
5 way related to recommendations related to positional  
6 asphyxia or prone or anything like that?

7 A No, sir.

8 Q Okay. All right.

9 A In full disclosure, they paid my way to  
10 the meeting.

11 Q Because they wanted to have the, be able  
12 to say that Dr. Geoff Alpert came to our meeting?

13 A No. They paid the way of three or four  
14 academics because they wanted academics represented.

15 Q Who were the other academics?

16 A I would have to look at the, at the  
17 report. I don't remember.

18 Q Okay. Moving on in your report. Going  
19 down to the one, two, three, fourth full paragraph.  
20 This is, at 10:18 Stroud can be heard saying hit him  
21 again at which point Phillips tasers him. Well, let  
22 me back up to the previous paragraph. At 10:17  
23 officers agree to forcefully roll Fernando on to his  
24 stomach. And they had to forcefully roll him on to  
25 his stomach because he wouldn't do it willfully,

1 right?

2 A Correct.

3 Q Okay. This is when you say that Phillips  
4 delivered a tenth shock to Fernando's body. In what  
5 way was he deploying his taser at this point? Was  
6 this drive stun or was it a probe mode?

7 A You know, I don't recall specifically, but  
8 they, later on they said, a couple of them said they  
9 ran out of cartridges so I would assume this is a  
10 cartridge unless it's specifically said drive stun.  
11 But I don't know for sure.

12 Q Let me go back and ask you. When Officer  
13 Phillips and Butera arrive, can you describe for me  
14 the circumstances or the, what was going on when  
15 they arrived?

16 A Well, when they first arrived the other  
17 officers were still trying to get control and trying  
18 to, and were continually shocking or tasing  
19 Mr. Rodriguez. I mean, it was a hectic, I'm sure it  
20 was a hectic situation.

21 Q Okay. Is it customary for law enforcement  
22 to rely upon the decisions and discretions of other  
23 POST or State certified law enforcement officers?

24 A Well, I think that's a, that's a --  
25 normally yes, but obviously not in situations that

1 are improper or can be handled differently. I seen  
2 cops walk away when other officers are doing things  
3 they didn't think was improper -- they didn't think  
4 was proper.

5 Q Okay. But in this situation the  
6 circumstances indicated a noncompliant, resisting  
7 arrest subject, right?

8 A Yes, sir.

9 Q And that was, that was the objective  
10 information upon which Butera and Phillips arrived  
11 or were faced with when they arrived?

12 A Yes, sir.

13 Q Okay. And would it be unreasonable for  
14 them to draw the conclusion that gaining control and  
15 placing into custody Rodriguez was a paramount  
16 priority?

17 A Well, no, sir, it wouldn't be  
18 unreasonable. I don't know what the conversation  
19 was between them and the other officers. But most  
20 officers coming on a scene with someone who's, who's  
21 fighting them and/or at least not complying, yeah,  
22 you would make the assumption that that's the  
23 purpose. How you fulfill that purpose is a  
24 different question.

25 Q And the City officers told Phillips that

1 Rodriguez was resisting arrest and being  
2 noncompliant, correct?

3 A My understanding, yes, sir.

4 Q And Stroud repeatedly asked Phillips to  
5 assist in using force to restrain Rodriguez,  
6 correct?

7 A That's correct.

8 Q Okay. And it was reasonable for Phillips  
9 to rely upon the information and instructions from  
10 Stroud?

11 A Well, the information, yes. The  
12 instructions, I mean they don't control each other.  
13 It's not like it's Phillips' supervisor. It's  
14 another officer and of course he wants to help him.  
15 Was he aware that Rodriguez had been tased ten times  
16 before or nine times before he delivered the tenth  
17 taser shot, I don't know. If he had --

18 Q Are you aware of any information that he  
19 had that information prior to his first deployment?

20 A Well, no. But he certainly should have if  
21 their taser wires and cartridges and, you know.  
22 That's, that's something that you should certainly  
23 ask and try to find out before you start tasing  
24 someone.

25 Q Well, just because there's taser wire

1 doesn't mean they have tased him the many times that  
2 they had prior to Phillips arrival, does it?

3 A No. That's absolutely right. And that's  
4 why Phillips, instead of just jumping in with all  
5 four feet is try to understand what's happened.  
6 It's not like this is, he doesn't have five seconds  
7 to ask because he been tased before. What have you  
8 guys done. I saw no evidence that he tried to find  
9 that out.

10 Q Okay. But it would not have been  
11 unreasonable for him to begin assisting and rely on  
12 the judgment of the City officers?

13 A I would agree with -- that was a complex  
14 question. I would agree with the first part, but  
15 rely on the judgment without information, you know,  
16 he doesn't know if Mr. Rodriguez is killed someone  
17 or if Mr. Rodriguez was walking down the street  
18 naked.

19 Q Right.

20 A He should have asked those questions.

21 Q And is it your opinion that he needs to  
22 set up a formal inquisition investigation  
23 independent of what these other officers have  
24 concluded?

25 A No, sir. He should ask them what



1 happened? What is going on?

2 Q Right. And was -- withdrawn. It was the  
3 decision of the City officers to put Rodriguez on  
4 the ground and use the taser after he walked away,  
5 right?

6 A In the beginning, yes, sir. They were the  
7 only ones there.

8 Q And it was within their discretion to  
9 determine whether or not that was appropriate, the  
10 City officers, right?

11 A Yes, sir.

12 Q Your opinion that they should have just  
13 continued to talk to him or should have tried to  
14 calm him down doesn't contemplate risks associated  
15 with him fleeing, does it?

16 A Of course it does.

17 Q Okay.

18 A And that's why you try to slow things  
19 down. That's the whole deescalation issue. He may  
20 not understand that at all and it wouldn't have  
21 worked. You don't know. But it certainly isn't  
22 going to work if you don't try.

23 Q Well, let me ask you this. You would  
24 agree with me that you would also be sitting in that  
25 seat if the officers had not restrained, attempted

1 to restrain Rodriguez and he ran into the street and  
2 got run over by a car? You would be critical of  
3 them not retraining him in that situation, yes?

4 A I would be critical if they tried to do  
5 nothing. But if they started talking to him and he  
6 just bolted into the street, I mean that's on him.  
7 They might try to tackle him or do something. But  
8 not -- not trying to talk to him when someone is  
9 just literally walking down the street naked, again  
10 it may work, it may not work. But if --

11 Q Let me hear the narrative that you would  
12 have used. Let me hear the narrative that you would  
13 have used for Fernando Rodriguez when you approached  
14 him.

15 A If I had approached him I would have  
16 gotten in front of him at some distance and tried to  
17 talk to him reasonably about what's his name. Just  
18 typical, the typical crisis intervention training.  
19 What's his name? What's going on? What's bothering  
20 him? In a calm way rather than yelling and  
21 screaming and threatening him.

22 Q Okay. So hey, Bud, what's your name?

23 A It's a good start.

24 Q Okay. What's wrong with you?

25 A No.

1 Q Okay.

2 A Why would you ask?

3 Q Why are you naked?

4 A No. That's not, I don't think a trainer  
5 would condone that kind of questioning. I think a  
6 trainer would start to gain rapport with this person  
7 which may or may not work because he is naked. He  
8 is obviously in crisis.

9 Q Hey, Bud, tell me about your home life?  
10 Is that what you are saying? What sort of rapport  
11 questions are you advocating?

12 A I'm advocating -- I don't know if these  
13 officers were trained in deescalation, in CIT, in  
14 anything. But it's, the training that I have been  
15 through would start with a simple question sure,  
16 what's your name? How are you? What are you doing?  
17 Why are you here? But neutral questions, not  
18 threatening questions. Not accusatory questions,  
19 but just calm questions.

20 Q What's your doctorate in?

21 A Mine?

22 Q Yeah.

23 A Sociology.

24 Q Those are kind of sociology questions?

25 A No. They're -- I wouldn't have any idea

1 about this as a sociologist. I know about this  
2 because I have been through deescalate training and  
3 crisis intervention training.

4 Q Okay. Would you agree with me that they  
5 had a duty to protect not only Rodriguez, but other  
6 people in the, including themselves, in the  
7 vicinity?

8 A Of course.

9 Q Okay. And that would include Officer  
10 Phillips and Butera upon their arrival?

11 A Of course.

12 Q Okay. And would they have a duty then to  
13 protect the officers, to try to protect the officers  
14 who were in a physical struggle with Rodriguez?

15 A You confused me there.

16 Q Right. You just agreed with me that the  
17 officers would have a duty to protect the public,  
18 Rodriguez and each other from injury upon arrival?

19 A Officer safety and public safety and not  
20 in that order. Probably public safety and officer  
21 safety.

22 Q Okay. And so when Phillips arrives on  
23 scene, there's already a struggle going on?

24 A Yes, sir.

25 Q And there's already a struggle going on

1     when Butera arrives?

2             A     Yes, sir.

3             Q     And so the other officers involved in that  
4     struggle, it would have been appropriate for Butera  
5     and Phillips to place their safety at a high  
6     priority ranking, yeah?

7             A     Well, the officers -- public safety first,  
8     officer safety second. So the officers who are in  
9     struggle, yeah, they should have told the arriving  
10    officers what's going on and the arriving officers  
11    should get a sense of, you know, what's happened  
12    before they jump in.

13            Q     Right. But seeing the fellow officers are  
14    in a struggle, it would be reasonable for them to  
15    place a high priority on protecting those officers  
16    or taking action to protect the officers?

17            A     Yes, sir, I would agree with that.

18            Q     And we would agree that the method for  
19    assuring everyone's safety is for Rodriguez to be  
20    detained?

21            A     To be controlled, yes, sir.

22            Q     Yes. Were you aware of any sort of  
23    physical condition that affected the officers  
24    ability to use common restraints on Rodriguez?

25            A     Well, I understand that he was missing

1 some fingers, but no. You don't handcuff in the  
2 fingers. You handcuff in the wrists.

3 Q Right.

4 A My understanding that he had two wrists.

5 Q Okay. And you understand that he did not  
6 have a normal size hand?

7 A Yeah. My understanding was he had normal  
8 size wrists.

9 Q Did you hear the testimony or are you  
10 aware of the evidence that indicates that the  
11 handcuffs slipped off of Mr. Rodriguez a couple of  
12 times?

13 A I don't recall testimony that when they  
14 were attached that they slipped off or that -- or if  
15 they did, I don't -- I don't remember testimony that  
16 they had been applied properly. To answer your  
17 question specifically, I am not aware that they were  
18 applied properly and they just slipped off.

19 Q Okay. How would they have applied them  
20 improperly?

21 A Not being tight enough. Not having the  
22 ability to clasp them.

23 Q Okay. Handcuffs are designed to sort of  
24 be applied without actually having to look at them,  
25 right?

1           A     Well, you can do them by feel. But  
2     depending on the situation you want to get them --  
3     you can always loosen them. Yes, sir. So you want  
4     to get them tight. Yes, sir.

5           Q     And it's hard to tighten handcuffs to an  
6     appropriate resistance when you are having to  
7     wrestle with someone, right?

8           A     That's correct.

9           Q     All right. Are you familiar with the  
10    tactical difference between link handcuffs and hinge  
11    handcuffs?

12          A     Yes, sir.

13          Q     And do you know what kind of handcuffs  
14    were being used here?

15          A     No, sir.

16          Q     Would you agree with me in saying that  
17    link handcuffs provide the opportunity for greater  
18    officer control?

19          A     No, sir. It's the opposite.

20          Q     You think that link handcuffs do?

21          A     No. I think the -- what did you call  
22    them.

23          Q     The hinge?

24          A     Hinge.

25          Q     Hinge handcuffs?

1           A     Yes, sir.

2           Q     Right. Hinge handcuffs provide greater  
3 control over a subject than link handcuffs do?

4           A     Much more, yes, sir.

5           Q     Okay. And that's because you can twist  
6 link handcuffs, right?

7           A     You don't have to twist them very far.

8           Q     Right. But you can twist the link  
9 handcuffs, yes?

10          A     The hinge handcuffs you just tweak and you  
11 got enormous pain control.

12          Q     I am making a maneuver with my hands as if  
13 I'm in handcuffs on the screen. Okay. I can rotate  
14 my hands around.

15          A     With --

16          Q     That I couldn't do if I had on hinge  
17 handcuffs, correct?

18          A     That's correct.

19          Q     Okay. Assuming for me, assuming that  
20 Mr. Rodriguez had on, that they applied link  
21 handcuffs, he would have had greater ability or  
22 retained some ability to move his wrists around once  
23 handcuffed, right?

24          A     Yeah. Most American police use link  
25 handcuffs. Yes, sir.



1 Q Uh-huh. And where is the most secure  
2 location to put hands when being handcuffed?

3 A Behind your back, palms out.

4 Q Okay. Why is that?

5 A Because you're more secure that way.

6 Q Why are you more secure?

7 A Well, if your hands are in front, you have  
8 the ability to -- even though they're handcuffed,  
9 you still have your ability to use them.

10 Q Okay.

11 A I think the analogy, one training session  
12 I thought was funny said it was like an elephants  
13 trunk. So that's why you want to -- typically you  
14 put handcuffs behind someone's back if you can.

15 Q Were the officers in this case able to put  
16 Rodriguez's hands behind his back?

17 A Well, they didn't until the end. No, sir.

18 Q Right. And did you see them -- you may  
19 not think that they tried to, but you would agree  
20 with me that when they were handcuffing him, he was  
21 resistant?

22 A Yeah. He was, he was certainly not being  
23 compliant. I don't think he was fighting as much as  
24 just not letting them handcuff him.

25 Q Right. And that's resisting, right?

1 Correct. That's active resistance?

2 A It looked to me, the little bit I could  
3 see on the video he just wasn't letting them  
4 handcuff him. He wasn't trying to hit him. He  
5 wasn't trying to fight them. He just wasn't letting  
6 them handcuff.

7 Q Active resistant doesn't call for  
8 striking, does it?

9 A Depends on the definition. For the most  
10 part, no.

11 Q Right. So if I say that he was actively  
12 resisting by pulling away, by pushing away, by  
13 avoiding officers' hands, would you disagree with  
14 me?

15 A Yeah. That would be active resistance.  
16 Yes, sir.

17 Q Okay. So we agree that he was actively  
18 resisting?

19 A If that's what he was doing, yes, sir.

20 Q Yes. How many sets of handcuffs did they  
21 try to put on him?

22 A I don't recall.

23 Q If I told you that they managed to get him  
24 restrained with five sets of handcuffs, how would  
25 you react to that?

1           A     I would be curious because that seems like  
2     a lot of handcuffs to get even someone as large as  
3     he is restrained.

4           Q     Right. It would be not unusual for  
5     officers to have to use more than one set of  
6     handcuffs to restrain someone, right?

7           A     Depending on the size. I mean I see two  
8     all the time, but certainly no more than two.

9           Q     You have any reason -- even in the, on the  
10    front?

11          A     I don't understand what you're.

12          Q     Have you ever seen someone double cuffed  
13    on the front?

14          A     Double cuffed on the front. I'm not sure  
15    I have.

16          Q     In the video did you see the officers  
17    standing on the link portion of the handcuffs  
18    between Mr. Rodriguez's hands?

19          A     If I did, it wasn't something I really  
20    paid attention to. I don't recall.

21          Q     Okay. You would agree with me that none  
22    of the taser deployments by Officer Phillips  
23    violated any prohibition of the tasers used by the  
24    Henry County Police Department, right?

25          A     Well, because the Henry County Police

1 Department policy is so inadequate. It's hard to  
2 tell what's -- you know, their deployment section  
3 is, is, doesn't give very much guidance. So  
4 probably nothing you could do would violate the --  
5 other than tase a pregnant woman. And even then it  
6 depends on the circumstances. So, yeah, probably  
7 nothing violated the policy.

8 Q All right. So that's, you would agree  
9 with me that they did not violate Henry County  
10 policy?

11 A Well, because Henry County policy was so  
12 inadequate. I do agree with you.

13 Q And I just wanted to know whether or not  
14 he violated it or not?

15 A No. He did not violate it.

16 Q Back to the hands. They would be  
17 considered still a threat when at the front,  
18 correct?

19 A Yes, sir.

20 Q Okay. And as we discussed with link  
21 handcuffs, he would still be able to move his wrists  
22 or rotate his wrists around, correct?

23 A Well, he could rotate his wrists and use  
24 his arms.

25 Q Okay. Did you hear Rodriguez ever request

1 medical attention or help?

2 A No, sir.

3 Q You did hear him yelling?

4 A Yes, sir.

5 Q Correct. Okay.

6 A Well, I heard him being very loud to use  
7 your language.

8 Q He was being very loud. Maybe he was just  
9 trying to tell the officer something. I don't know.  
10 But it was nothing that was intelligible, right?

11 A Nothing I understood. No, sir.

12 Q I mean he, he used some foul language,  
13 right?

14 A Yes, sir.

15 Q Okay. And he talked about having a son.  
16 My son, my son. Did you hear that?

17 A I didn't -- I didn't really understand  
18 much of what he said.

19 Q Okay. You put in your report that at  
20 10:24 Officer Stroud said quit trying to bite me.  
21 You're not going to bite me?

22 A Yes, sir.

23 Q At that point they put his head down on  
24 the ground, right, forced his head down?

25 A Yes, sir.

1 Q And you would agree with me that that  
2 would be an appropriate measure to control his head  
3 from being --

4 A Well, if he were -- that's what I said  
5 earlier was Phillips saying Rodriguez turned his  
6 head and that's when Stroud kicked him. I don't  
7 know if it was just a response to him turning his  
8 head, which would be excessive use of force or he  
9 was trying to bite him. Even then it's an excessive  
10 use of force.

11 Q Not --

12 A I'm sorry?

13 Q At the 11th Circuit it wouldn't be, not to  
14 a bite.

15 A Well, if -- well.

16 Q Fennell v. Gilstrap would say no.

17 A To avoid a bite, I don't see where -- I'm  
18 not a lawyer. I'm just saying in police training if  
19 he is trying to bite him, that's one thing. If he  
20 is just moving his head, that's something else.

21 Q I tell you, Bobby Lee Cook and I litigated  
22 that. And a kick to the face in, to stop a bite was  
23 justifiable.

24 MR. JOHNSON: Is that a work shoe?

25 MR. MORRIS: It was in the, it was

1 actually in the jail.

2 MR. JOHNSON: No. I mean was the bite  
3 after the officer's shoe?

4 MR. MORRIS: No. And in fact, in this  
5 case we don't know, we know there's a lot of  
6 hands holding so I think it would be sort of  
7 analogous if someone is yelling don't bite me  
8 which is what we had in the other case, the use  
9 was justifiable.

10 BY MR. MORRIS:

11 Q You put forth as a fact in here that --  
12 you can go to page four. It says he's quit  
13 breathing, right? And then you contend Butera  
14 replied are you serious? Do you see that? On page  
15 four?

16 A Yeah. It says, the first paragraph that  
17 says around 10:28?

18 Q Uh-huh. And how did you conclude that it  
19 was Butera?

20 A What I said about Butera -- well, I state  
21 in here Officer Phillips stated twice he's quit  
22 breathing.

23 Q Right. But you didn't include the part  
24 where somebody says no, he is breathing. Why is  
25 that?

1           A     It's an omission.

2           Q     Is it, is it significant if someone said  
3 no, he is breathing or not?

4           A     Well, I don't remember -- I wrote that a  
5 while ago. I don't remember why I didn't put that  
6 in there. But to me this was just again the point  
7 of Butera saying don't relax on him too much and  
8 then Officer Phillips saying he's quit breathing.  
9 And then someone else says he's still breathing.  
10 And Butera replies are you serious.

11          Q     Right.

12          A     So I don't know, I don't know what's  
13 happening. I don't know why I put that in there.  
14 It was just kind of a series of events.

15          Q     Okay. But I think you then ten used it as  
16 a starting point to count for when he stopped  
17 breathing?

18          A     Oh, I have no idea when he stopped  
19 breathing.

20          Q     Okay. So if someone says that he -- no,  
21 he's breathing, would that be significant to your  
22 opinions at all?

23          A     No, sir.

24          Q     Okay. You're not contending then that at  
25 that point that they should have done something



1 medically for him?

2 A Well, if, if they know he's not breathing,  
3 of course. And they should have rolled him over  
4 anyway. But even at, I don't know who said it. At  
5 10:29 the officer commented I can't tell if he's  
6 breathing. That's when they, that's why Phillips  
7 kind of took his weight off.

8 Q Have you pinpointed a specific moment in  
9 the video that you watched where he stopped  
10 resisting?

11 A No. I can't tell. I just can't tell  
12 because there's too many bodies, too much going -- I  
13 can't tell when that happened.

14 Q How long -- I'm curious how you determine  
15 whether someone is finished resisting or not?

16 A Well, that's going to be an officer's  
17 determination of, of not being, not feeling  
18 resistance not, you know, kind of a calm after the  
19 storm so to speak. That's where I agree with you.  
20 That's where a video from different angles might be  
21 very helpful.

22 Q You would agree with me that one of the  
23 ways in which an officer might determine whether  
24 someone is finished resisting or not is based upon  
25 the prior actions of that individual, right?

1           A     Well, if he's quitting resisting it would  
2     be under the present actions of relaxing if you will  
3     or certainly not fighting.

4           Q     Right. Right up until he starts fighting  
5     again. He's quit it right up until he starts it up  
6     again, right?

7           A     If he is going to start it up again then  
8     he would quit --

9           Q     Right. You're not saying that any of my  
10    people are capable of predicting future, right?

11          A     No.

12          Q     So past actions and past levels of  
13    resistance might be one source of information for  
14    assessing likelihood of future conduct, right?

15          A     Well, we all say that the future is based  
16    on the past, but just as you said you can't predict  
17    the future. So when someone quits resisting, you  
18    have to quit fighting.

19          Q     Right.

20          A     You have to quit having response to  
21    resistance because there is no resistance.

22          Q     Right.

23          A     If they start fighting again, then you  
24    deal with it.

25          Q     Well, let me say it this way.

1 Historically you are retained by the plaintiffs and  
2 I am retained by the defendants. Now, there's  
3 nobody to say that you won't be retained by civil  
4 defendant tomorrow or that I won't be retained by a  
5 civil plaintiff tomorrow. But based on the history  
6 of both of us, we can kind of predict what our next  
7 case is going to look like, right?

8 A You know, I disagree with that. I get  
9 calls, I get calls from lawyers all the time, both  
10 plaintiffs and defendants.

11 Q So what I then conclude that your  
12 testimony is that it would be irrational and  
13 unreasonable for them to use Fernando Rodriguez's  
14 prior resistance and continued resistance as an  
15 indicator that he may resume resisting in the  
16 future?

17 A I, that's like a three-part question.

18 Q Okay.

19 A I agree that -- well, let me put it this  
20 way. Once he quits resisting, you cannot use force  
21 just because he's resisting in the past. If he  
22 starts resisting physically again, then you can use  
23 force again.

24 Q But my, that's really sort of my question  
25 is that without hindsight we really don't know when

1 he's finished resisting?

2 A Well, he's finished resisting -- look,  
3 when we do our research with this, we look at  
4 iterations. We see what the suspect does, we see  
5 what the officer does. We see what the suspect  
6 does. And these are interactions. So when the  
7 suspect quits fighting, the officer can't take,  
8 can't start, you know, fighting just because he  
9 thinks well, he might hit me again. He's got to  
10 stop. And then if he starts resisting again, then  
11 the officer can use force again.

12 Q Well, he continues to use force, right?  
13 It is reasonable for him to continue using force,  
14 some amount of force?

15 A Not when he -- to get him controlled, yes.

16 Q Okay. And if that means restraining him  
17 on the ground, when does he decide he can no longer  
18 do that? What is the magical point that you're  
19 looking for that is instructed to these officers  
20 that they should have or were required to stop  
21 restraining him?

22 A Once he is controlled.

23 Q When was he controlled?

24 A I mean I can't tell you that. Because  
25 they had cuffs on him in some way, shape or form so

1 he was more controlled than he was before. Was he  
2 continuing to fight. These are all the questions --

3 Q The cuffs aren't determinative of control.  
4 Because they had cuffs on him and he was out of  
5 control. You told me this a minute ago that he was  
6 not under control?

7 A He was not under control. This is, this  
8 is -- the jury is going to have to determine some of  
9 these questions that we can't determine.

10 Q Okay. And so it's just your opinion that  
11 at some magical point between him resisting and his  
12 death they had control?

13 A I mean he could have died while, before he  
14 was under control. But my point is they tased him  
15 what, 14 times. They were on his back. They were  
16 doing all sorts of things. In fact, even the  
17 medical examiner found it to be a homicide. They  
18 used unreasonable force and they used it in terms of  
19 the taser and they used in terms of keeping him on  
20 his stomach and putting pressure on him.

21 Q Right. Right. And how many broken ribs  
22 did he have?

23 A No idea.

24 Q Would that be objective indication of  
25 force on his torso?

1           A     It takes a lot to break a rib so I'm not a  
2 medical expert. I don't know.

3           Q     Okay. Certainly if there were broken  
4 ribs, you would point to that as evidence of  
5 downward force, yes?

6           A     If there were broken ribs it would  
7 indicate a lot of pressure was used on his ribcage.

8           Q     Okay. And behind his ribs are what?

9           A     His vital organs.

10          Q     Including his lungs?

11          A     Yes, sir.

12          Q     Okay. Was there any, any evidence of  
13 damage to his throat?

14          A     I don't recall.

15          Q     Do you recall seeing any evidence of  
16 damage to his, any part of his structural thoracic  
17 cavity?

18          A     No, sir.

19          Q     Okay. Did you read in the medical -- and  
20 I guess not because you didn't include it. Are you  
21 familiar with petechial hemorrhaging?

22          A     I am not a medical doctor. I'm not a  
23 medical specialist.

24          Q     Okay. Have you ever offered an opinion as  
25 the significance of petechial hemorrhaging?

1           A     No, sir.

2           Q     Is it your contention that rolling  
3 Mr. Rodriguez off of the prone position would have  
4 prevented his demise?

5           A     I can't -- I can't speak to the cause of  
6 the death. I can tell you that it's much more  
7 likely that removing that pressure from the, putting  
8 him on his stomach and putting pressure on his back,  
9 he would have been safer.

10          Q     Is that not a medical opinion?

11          A     Yeah, that is kind of a medical opinion so  
12 I will rephrase it and say common police practice is  
13 to get him off of his stomach as soon as practical.

14          Q     Based upon medical opinions that you can't  
15 criticize?

16          A     No. Based upon common police practice.  
17 That's all I can offer.

18          Q     All right. Would you agree with me that  
19 during the time period that Phillips initially  
20 placed a knee on Rodriguez's upper back, that  
21 Rodriguez continued to talk and yell and move his  
22 body?

23          A     He was, he was certainly, he was certainly  
24 raising his voice as I heard it. And certainly  
25 moving, yes, sir.

1           Q     Have you ever heard officers say that if  
2     you're talking you're breathing?

3           A     Yes, sir.

4           Q     And you understand that the exhalation of  
5     gases across the vocal cords is what creates sound?

6           A     Well, my understanding, again I'm not a  
7     medical doctor, but under, in the police training I  
8     have seen trainers explain that you can still, you  
9     can still be talking and be, and be dying. And  
10    that's not an indication that you want to get them  
11    off of his stomach to be safe.

12          Q     That you can be breathing and dying of  
13    asphyxiation?

14          A     You can make --

15          Q     Is that what you said?

16          A     You can make these utterances and still --  
17    yes, and still be in -- I believe George Floyd said  
18    several times I can't breathe.

19          Q     Right. Did Fernando Rodriguez ever say he  
20    could not breathe?

21          A     I couldn't understand anything he said.

22          Q     But you never heard him say it?

23          A     No, sir.

24          Q     Okay. You did hear him yelling though,  
25    correctly?



1           A     I heard him raising his voice as you  
2 pointed out, yes, sir.

3           Q     We will use raising your voice. I like  
4 that. Are you objective -- are you aware of any  
5 objective evidence in the autopsy, in the autopsy  
6 that supports his demise from positional asphyxia?

7           A     I think I wrote that the, the autopsy  
8 reported -- and I'm reading from the report. The  
9 cause of death was quote asphyxia due to physical  
10 restraint in the prone position with compression of  
11 the chest.

12          Q     Right. But was there any physical  
13 evidence of positional asphyxia aside from the drawn  
14 conclusion?

15          A     Well, again, medical examiner found  
16 injuries occurred during quote physical altercation  
17 with law enforcement. I can't give you a medical.  
18 I can only read the report and tell you what it  
19 says. Someone else is going to have to interpret  
20 it.

21          Q     Is there -- you would disagree with me  
22 that there is absolutely no evidence or indication  
23 that any officer put weight on Fernando Rodriguez's  
24 abdomen?

25          A     Directly, that's correct.

1           Q     Okay. And you told me that you're aware  
2 of the studies that show placing weight on an  
3 individual's back does not cause them to die from  
4 asphyxiation, right?

5           A     Healthy individuals, yes, sir.

6           Q     And were you aware of recent studies that  
7 show that even up to 225 pounds of prone weight on a  
8 person's back was safe?

9           A     I believe again it was a Kroll study and I  
10 think they used weights that they put on the backs  
11 until they thought -- so, yes, I'm aware of those  
12 studies.

13          Q     Okay. And were you aware that the  
14 conclusions drawn were that 225 pounds do not  
15 significantly interfere with the ability to  
16 ventilate?

17          A     I am aware that's what he concluded. Yes,  
18 sir.

19          Q     And they even hogtied the subject. Did  
20 you know that?

21          A     Right. And he was a healthy subject.

22          Q     Okay. And under those conditions there  
23 was no interference with the person's ability to  
24 ventilate?

25          A     That was the conclusion he drew, yes, sir.

1           Q     Okay. And in this situation are you aware  
2 of any unique condition that Mr. Rodriguez had that  
3 distinguished him from the person in the test?

4           A     Well, Mr. Rodriguez was first seen naked  
5 walking down the street, unable to really correspond  
6 very well. They either knew or should have known  
7 that he was in some sort of crisis. So, yes, that's  
8 a huge difference.

9           Q     What does crisis mean?

10          A     Crisis can mean -- that's why I use the  
11 term mad, bad or sad. You don't know what is going  
12 on through his mind. It's just not a quote normal  
13 response.

14          Q     But what is crisis? I don't know what  
15 that means in the context of law enforcement  
16 training.

17          A     It means someone that is not responding as  
18 a normal person would respond.

19          Q     Okay. And there's no one set way of  
20 responding to a person in crisis, is there?

21          A     Well, it takes medical doctors a long time  
22 to figure out what's going on inside someone's head.  
23 So a police officer can only respond, realizing that  
24 this is not a normal response and act according.  
25 Mad, bad or sad.

1           Q     Officers have been placing subjects and  
2 detainees in the prone position and holding them  
3 down with body force for decades, is that true or?

4           A     Yes, sir. And when they started dying at  
5 a higher rate is when they decided that it was  
6 prudent to move them off of their stomach.

7           Q     Have you done any studies of lives saved  
8 based upon rolling them off, rolling them off the  
9 prone position?

10          A     Well, you wouldn't know. You couldn't do  
11 an experiment because if the person is saved he  
12 didn't die.

13          Q     Is there any quantitative way to determine  
14 the value of rolling someone off of a prone  
15 position?

16          A     Not ethically, no, sir.

17          Q     Okay. So what distinguishes the decision  
18 to, the motivation for moving someone from the prone  
19 position? How do you say that that is anything  
20 other than conjecture?

21          A     Because it is a safe procedure. It's done  
22 after the person is controlled. And it's done in a  
23 way that can help him breathe without the  
24 possibility of this compression.

25          Q     But we don't really know if it helps them

1 breathe?

2 A Well, people die when they are on their  
3 stomachs.

4 Q Well, I just told you that they put people  
5 who have Covid, which is a lung compromising  
6 disease, on their stomachs.

7 A Kevin, I don't know why you keep asking me  
8 these medical opinions. I can't give them.

9 Q Okay. Are you aware of any reliable  
10 studies that has verified that a partial body weight  
11 pressure from a knee of an officer on a person's  
12 back with produce or cause positional asphyxia?

13 A I am relying on the doctors, the medical  
14 doctors who have testified. I'm relying on their  
15 word and their opinions. I am not a medical doctor.

16 Q But you're, when you answered that  
17 question you did not give me a specific study which  
18 was the heart of my question. I asked are you aware  
19 of any reliable study. You didn't answer with a  
20 specific study. Am I to conclude that you do not  
21 rely on or are not aware of any reliable study?

22 A Again, I am giving you answers based upon  
23 common police practice. I cannot read the medical  
24 literature. I don't understand it. So I rely on  
25 the fact that what has been done has impacted police

1 departments to the point where the common police  
2 practice is to roll someone over as quickly as  
3 possible to avoid the potential.

4 Q Are you aware that the fairly recent trend  
5 of warnings about the possibility of positional  
6 asphyxia were borne out of a study in nine -- early  
7 1900s, 1990s in California?

8 A I'm aware that the, some of the original  
9 research was -- I can't remember the guys name, but  
10 yes, sir.

11 Q And it has since been deemed inaccurate?

12 A Well, it's controversial. Put it that  
13 way.

14 Q If, so some people have concluded that the  
15 conclusions drawn from that study are not reliable?

16 A Some have said that the conclusions are  
17 inaccurate. I can't remember the guy's name, but he  
18 went back and retested and has argued that it is  
19 controversial.

20 Q Okay. The unproven theory of positional  
21 asphyxia or restraint asphyxia has gained media  
22 attention that has resulted in concern in law  
23 enforcement, right?

24 A Well, I think -- yes, I agree with that.  
25 And that's why since it's not a risk to law

1 enforcement to roll someone over after he's been  
2 controlled, that's why the customary practice is to  
3 do so.

4 Q Okay. And would you agree with me in  
5 saying that the law enforcement response to the  
6 George Floyd case has been motivated by media  
7 criticism?

8 A Well, I think the -- I think the law  
9 enforcement response has been motivated by fear of  
10 litigation and fear of death.

11 Q Okay. And not science?

12 A I mean once again you asked me --

13 Q Can you answer that.

14 A -- medical issues I can't respond to. I  
15 can tell you that police departments have changed  
16 their policies due to what happened to George Floyd.

17 Q Right.

18 A For a variety of reasons.

19 Q And this case is not the same as the  
20 George Floyd case, right?

21 A That's correct.

22 Q This the case -- in George Floyd, the  
23 officer in that case had his knee on Mr. Floyd's  
24 neck for approximately ten minutes, correct?

25 A And my understanding from the medical

1 doctors is that that is not what killed him. What  
2 killed him was leaving him in a prone position for  
3 an extended period of time.

4 Q Laying on his belly is what caused him to  
5 die?

6 A If you listen to the testimony given by  
7 the medical doctors, that's right.

8 Q Okay. So the knee in the neck is not what  
9 killed George Floyd?

10 A That's correct. The knee in the neck did  
11 not, did not stop the breathing and did not stop the  
12 blood flow.

13 Q Okay. Are you aware of any studies by  
14 DiMaio in 2006?

15 A Yes, sir.

16 Q What does that the study say?

17 A You would have to show it to me.

18 Q When's the last time, when was the last  
19 time you familiarized yourself with the DiMaio  
20 study?

21 A It's been years.

22 Q Okay. Are you familiar with the study in  
23 2006 by Newman?

24 A That doesn't ring a bell. No, sir.

25 Q Are you a familiar with a study by Hall in



1 2012?

2 A Is that the one, the Canadian one I talked  
3 about? The RCMP?

4 Q What about Lassoﬀ in 2017? Familiar with  
5 that study?

6 A No, sir.

7 Q Savasa and Chan in 2018?

8 A Well, I'm familiar with Chan's work, but I  
9 don't recall that one specifically.

10 Q What about Kroll and Ross in 2018?

11 A Well, I'm familiar with Kroll and Ross,  
12 but I don't know which one is which. You would have  
13 to show it to me.

14 Q Have you read, have you consulted any of  
15 these studies in formulating your opinions for  
16 today?

17 A Well, I'm familiar with some of the, with  
18 the bulk of that work and I'm aware of them and I  
19 understand them. And consult them specifically, no,  
20 sir.

21 Q Okay. So you would, you would agree with  
22 me that there's no, that you didn't go and pull  
23 these studies and contemplate them in formulating  
24 your opinions for today?

25 A Well, I'm very family with particularly

1 with Hall study and certainly with Kroll and Ross.  
2 They have several. In fact, with Kroll and Chan I  
3 think I have a book that has 20 chapters in it about  
4 tasers and positional asphyxia so I am familiar with  
5 those works. I did not pull them when I wrote my  
6 report. No, sir.

7 Q There's a difference in not consulting  
8 them and dismissing the information in the studies.  
9 You are just saying that you, you didn't consult  
10 them at all. You're not saying that their studies  
11 are worthy of dismissal, right?

12 A Oh, I think, I think particularly Halls is  
13 very interesting. Again, the methodology, I got  
14 problems with the methodology and the, some of the  
15 Kroll stuff, again other -- if you take away the  
16 sample of healthy people, I think they do good work.

17 Q If a doctor were to tell you that there's  
18 physiologically nothing wrong with evaluating the  
19 risk by using healthy subjects, there's nothing that  
20 impacts the value of the conclusion -- let me see if  
21 I can rephrase this. If a doctor were to tell you  
22 that there's nothing in firm about a study that  
23 relies solely on healthy subjects, would it change  
24 your opinion?

25 A No, sir. I bet that doctor said there's

1 no reason to take a Covid shot.

2 Q What if other doctors said the same thing?

3 A Look, again I can't answer these medical  
4 issues. They're controversial. Covid shots.

5 Q Right. But you have -- listen, you got to  
6 agree with me. You have made a value judgment and  
7 said look, there's doctors out there that say that  
8 leaving them in the prone position causes this. So  
9 I am going to use that for guiding me in consulting  
10 and making recommendations. That is a, that is a  
11 foundational cornerstone to your recommendations.  
12 And if that foundation were a doctor that you  
13 respect said there's really no difference and we  
14 don't see any harm, would it change your opinion?

15 A No, sir because my opinion is police  
16 policies and tactics should be the least harmful.  
17 So even if it's controversial, we're not asking  
18 police officers to do something risky. We are  
19 asking them as soon as they have reached this point  
20 of control, get them off their stomach because it's  
21 a controversial if not accepted medical issue. I  
22 can't speak to the medicine. I'm only speaking to  
23 the common police practice.

24 Q Okay.

25 A And if you ask it again, I'm going to say

1 asked and answered. At least I made the court  
2 reporter smile.

3 Q You put in your opinion about the O.C.  
4 spray.

5 A Yes, sir.

6 Q Is it your opinion that they should have  
7 used O.C. in this case?

8 A No. My opinion was -- I put in the O.C.  
9 spray because their policy refers to the O.C. spray.  
10 That's all it was. And it says quote, the CEW is to  
11 be deployed in accordance with the policy 302.00 and  
12 at the same level as force as O.C. spray. And then  
13 I quoted the O.C. spray policy which is to quote  
14 overcome physical resistance used by a person  
15 against the officer or who is in immediate threat to  
16 the public safety or the officer. That's the only  
17 reason I used it because their policy uses it.

18 Q Okay. It's not your opinion that they  
19 should have used an O.C. spray in this case?

20 A I mean they could have. My suggestion was  
21 to go hands-on first and I think that's where they  
22 failed and they kept shocking him.

23 Q Okay. You would agree with me that having  
24 used O.C. spray could have compromised -- could have  
25 created a greater risk to someone with compromised

1 lung capacity?

2 A It certainly could have.

3 Q Okay. On page six of your report.

4 A Yes, sir.

5 Q You say Henry County Officer Phillips  
6 arrived at the scene and without attempting to  
7 reason with Fernando called for mental health  
8 professionals to calm the situation down or use  
9 alternative celeste force -- use alternatives to use  
10 of force or minimal force, he violated accepted  
11 police practices and delivered seven taser shocks  
12 into Fernando's body.

13 Isn't it true that they had, that  
14 Fernando had already been offered medical  
15 assistance?

16 A Well, in terms of if you do what I tell  
17 you, we will bring you an ambulance. Yes, sir.

18 Q Right. They did try to incentivize his  
19 compliance by telling him that medical, they would  
20 give him medical care?

21 A They -- that's the language they use. We  
22 have no idea if he understood it.

23 Q Okay. You also know objectively that the  
24 ambulance had already been summoned and dispatched,  
25 was in route?

1           A     I believe that's true, yes, sir.

2           Q     Okay. And I'm talking about at the time  
3 that Phillips arrived, medical care was on its way?  
4 Yes?

5           A     Yes.

6           Q     Is it your contention, because you say  
7 that he didn't call for mental health professionals,  
8 do you have some knowledge about what the process  
9 would have been to summon mental health  
10 professionals?

11          A     I have no idea in Henry County who is on  
12 call, if they have mental health professionals who  
13 can assistance the police. I don't know that.

14          Q     Okay. If there was no one, then that  
15 would be a superfluous statement that he needed to  
16 summon mental health professionals?

17          A     Yeah. If there's no one to call and  
18 there's no one to work with to provide assistance,  
19 then there's no one to call.

20          Q     Okay. You said that he should have tried  
21 to calm the situation down. Is there any indication  
22 or do you have any knowledge that doing something  
23 other than what he did would have been effective at  
24 controlling Fernando Rodriguez?

25          A     You have, have no way to know because they

1 didn't do anything else other than tase him seven  
2 times. So we don't know if he had done something if  
3 it would have been effective.

4 Q Or used alternatives to use of force. I'm  
5 not sure what those are. What are alternatives to  
6 use of force?

7 A Maybe trying to calm. Again, the  
8 deescalation techniques of calming, the slowing  
9 things instead of, you know, just jumping right in.  
10 Trying to figure out what's going on. Tasing him  
11 seven times just is unacceptable police practice and  
12 unreasonable.

13 Q Right. But you would agree with that they  
14 used the minimal amount of force necessary to  
15 control him, yes?

16 A No. I think tasing him what, 10, 12 times  
17 is not the minimum amount of force.

18 Q I never saw him tase him after he was  
19 under control. Is it your contention that they do?  
20 Once he's compliant. Let me put it that way.

21 A Well, once he's compliant he's, he's  
22 unresponsive basically.

23 Q So they stop using force when he became  
24 compliant?

25 A When he became unresponsive.

1           Q     Okay. You indicate in that same paragraph  
2     that, make the conclusive statement this is a  
3     violation of their own policy. Which policy are you  
4     referring to in that statement?

5           A     Well, I think the Henry County. Maybe I'm  
6     mistaken it here because I was probably assuming a  
7     reasonable policy. I guess I should say that, you  
8     know, he certainly wasn't following the training  
9     that TASER puts out, the manufacturer puts out. Or  
10    any reasonable policy.

11          Q     So you're not aware of any policy of Henry  
12    County that was violated as we sit here today?

13          A     No because Henry County policy is  
14    basically other than a pregnant woman. And that's  
15    only under certain conditions. That they really  
16    don't give you much guidance. The taser, as I put  
17    in here in 3.B, the TASER manufacturer have more  
18    instructions than Henry County. And every policy --  
19    I'm sorry. Every training I have been through in  
20    police departments relies significantly on the  
21    manufacturer.

22          Q     Okay.

23          A     And apparently Henry County doesn't.

24          Q     The next part is a violation of accepted  
25    police practice.



1           A       The multiple tasings, the leaving him on  
2 his stomach, the continual putting pressure on him.  
3 Yes, sir.

4           Q       Can I substitute the word accepted with  
5 adopted?

6           A       I mean, you can do whatever you want. I  
7 think it's acceptable police practice.

8           Q       Well, acceptable doesn't necessarily mean  
9 that it's been adopted by agencies.

10          A       Well, it should be. And Henry County  
11 should have adopted it.

12          Q       Right. Accepted police practices. I just  
13 don't know what that means.

14          A       Well, it --

15          Q       I don't know how you say that.

16          A       It's kind of like best practice. I'm not  
17 sure what that means, but everyone uses it. And  
18 this is kind of a catch phrase in policing  
19 parliaments of acceptable police practice.

20          Q       So there's no, there's no quantitative  
21 relationship with the wording accepted police  
22 practices? We don't know if that means 30 percent,  
23 50 percent, 75 percent, do we?

24          A       Well, we do know that there have been  
25 national studies, although agencies with a hundred

1 or more officers, we do have data on that sample.  
2 We don't have it on a national sample with all,  
3 because with so many small agencies.

4 Q All right. So a violation of accepted  
5 police practice. That says to me that you know the  
6 number of agencies that have adopted this practice  
7 and can tell me how well accepted it is.

8 A It is accepted, like other policies, we  
9 can get into pursuit policies, we can get into use  
10 of force policies. It is, we don't have, we don't  
11 have definitive national data. We do have major  
12 city data. We do have survey data. And they all  
13 point to this using the taser this many times  
14 violates those practices.

15 Q So it may, it may be a minority of  
16 agencies that have adopted these practices?

17 A I mean, I suppose if you're talking about  
18 agencies with two or three people it could be. But  
19 the agencies that are surveyed by Bureau of Justice  
20 Statistics, no, it isn't.

21 Q But even though -- you don't know how  
22 many -- you can't put a percentage on them by the  
23 Bureau of Statistics, the FBI statistics, can you?

24 A They have, it's kind of like a public  
25 opinion survey. Yeah, they calculate the ranges and

1 they calculate the percentages.

2 Q But as you sit here today you can't tell  
3 me the quantitative amount of agencies that have  
4 adopted or have accepted this police practice?

5 A Well, you know --

6 Q Just start with yes or no.

7 A No, I can't.

8 Q Start with yes or no and then you can  
9 explain it.

10 A No, I cannot. But again, anyone who buys  
11 a taser is getting the instructions that I have  
12 provided below.

13 Q Okay.

14 A And if agencies get that instruction, they  
15 are dismissing it if they don't follow it.

16 Q Uh-huh. Have you conducted any study to  
17 ascertain how many agencies have adopted an adequate  
18 policy on positional asphyxia?

19 A Oh, not since gosh, probably the nineties.  
20 No, sir.

21 Q Okay. Turn to page nine.

22 A Yes, sir.

23 Q Your opinion in number 11.

24 A I'm not going to give an approximate cause  
25 opinion. In Georgia I'm not allowed to I don't

1 think.

2 Q Same with number 12?

3 A Yes, sir.

4 Q And number 13?

5 A No. I believe they used unnecessary and  
6 unreasonable force.

7 Q Is that not a legal conclusion?

8 A If the Court tells me it is, then I won't  
9 use it.

10 Q Have you ever been able to -- have you  
11 ever been able to offer that opinion in Federal  
12 Court in the state of Georgia?

13 A I used it, I have been able to do some in  
14 some states. I don't recall if it's Georgia or not.

15 Q Okay. You would agree with me, however,  
16 though that part of that conclusion requires you to  
17 invoke a certain knowledge of the law?

18 A My understanding again of police practice,  
19 depending on what questions I'm asked, I feel pretty  
20 comfortable with some of the, with some of the  
21 Supreme Court decisions.

22 Q Okay. But you're not here to offer a  
23 legal opinion?

24 A Right.

25 Q And how would you make sure that the jury

1 knew that you weren't offering a legal opinion? You  
2 were offering an opinion that is based upon police  
3 practices?

4 A In training and policies. I would preface  
5 it that way.

6 Q Okay. But this isn't the law. I'm not  
7 giving you a legal conclusion.

8 A That's correct.

9 Q And of course their determination is going  
10 to be based upon the law and not practices?

11 A I will give an opinion if the Court allows  
12 me. And obviously the jury listens to all the  
13 testimony and determines what they believe is  
14 appropriate.

15 Q Okay. Let me look at my notes real quick.  
16 You have no opinion about whether or not  
17 Mr. Rodriguez had high blood pressure and how it may  
18 have impacted his, whether it played a role in his  
19 demise?

20 A That's correct.

21 Q You don't know whether or not he had  
22 cardiovascular disease and whether or not that may  
23 have played a part in his demise?

24 A I do not know. But again, these are  
25 indicators of someone in crisis. You have got to

1 think about those things as a police officer.

2 Q You don't know whether or not he had an  
3 enlarged heart or whether or not that may have  
4 played a role in his demise?

5 A That's correct.

6 Q Okay.

7 A But honestly what you're doing is  
8 buttressing my concerns with doing studies of people  
9 who are healthy.

10 Q So what I just heard you say is you  
11 believe that there's a correlation between the  
12 ability to aspirate and someone who's taking LSD or  
13 has a bad heart?

14 A You're asking me medical questions.

15 Q No. You gave me a medical answer. You  
16 did. You really did. You said you're buttressing  
17 my opinion in saying you can't use unhealthy people.  
18 So you are drawing a judgment on unhealthy people  
19 and how it may impact the studies.

20 A Yeah, how it impacts studies. Right.

21 Q How do you have any knowledge if it would  
22 impact it or not?

23 A Because you can't do the studies.

24 Q Well, you may be able to do the studies  
25 and they may have value. You just don't know?

1           A     You cannot do studies on -- I teach this  
2     in graduate school. I'm a certified research board,  
3     we evaluate these all the time. You cannot do  
4     studies ethically on people who are compromised and  
5     the risk is fair greater than the benefit.

6           Q     Right. You did not, you don't have any  
7     opinion about whether or not he had excited deliria  
8     that caused his demise?

9           A     No. I'm not a hundred percent sure -- I  
10    have done the research, I have read the articles. I  
11    don't know what excited delirium is.

12           MR. MORRIS: Very good. I think that's  
13    all I have. About three hours and ten minutes  
14    of actual cross, close to what I promised.

15           THE WITNESS: As far as I'm concerned  
16    you've gotten into my fourth hour, so.  
17    We're --

18           MR. MORRIS: Hell, if I'm going to buy it,  
19    I'm going to stay. I'm going to ask you some  
20    more medical questions.

21           MR. JOHNSON: I got some questions too.

22           MR. MORRIS: Well, now Jess is on the  
23    clock. He is buying your fourth hour.

24           MR. JOHNSON: Oh, no, this is your clock.  
25    Are we ready to --

1 MR. MORRIS: Wait a minute. If it's my  
2 clock, then we're done. I have no more  
3 questions.

4 MR. JOHNSON: I'm going to ask questions.

5 MR. MORRIS: Well, then you're buying it.  
6 That is the way it works, man. He if he is  
7 going to charge me or charge for it.

8 DIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q Dr. Alpert, I hate to do this, but can I  
11 get a brief recitation of your professional  
12 background and your educational background?

13 A I have a Ph.D. in sociology from  
14 Washington State University. I have been a  
15 professor of sociology and criminology for the last  
16 40 something years. I've worked in universities and  
17 I have worked in agencies. I have, since 1980s  
18 after doing the after-action report for the Miami  
19 riots, I specialized in use of force and other  
20 high-risk policing activities. In my research  
21 agenda published 14, 15 books, over 150 peer  
22 reviewed articles. Mostly involving these different  
23 researches on these high-risk activities.

24 Q Did any of those books and peer review  
25 articles involve the use of force?



1           A     Yes, sir. A lot of them.

2           Q     And that's by police departments and  
3 police officers?

4           A     Yes, sir.

5           Q     Okay. And do you teach about the use of  
6 force?

7           A     Yes, sir. Mostly -- well, both to  
8 officers and to college. Lately it's been  
9 undergrad. Prior to Covid is all graduate students.

10          Q     And how long have you been doing that?

11          A     Over 40 years.

12          Q     And have you conducted your own studies  
13 about the use of force?

14          A     Yes, sir.

15          Q     How many?

16          A     I probably received ten or so grants from  
17 the National Institute of Justice focusing on the  
18 use of force or emergency driving.

19          Q     How do you receive grants from that  
20 institute?

21          A     Well, you, they put out a request for  
22 proposal. You propose the research and it's a very,  
23 very difficult and competitive process. But we have  
24 been very fortunate on getting the money. It's a  
25 research arm in the justice department.

1           Q     Okay. And when you submit these grants,  
2 what do you have to prove to the Department of  
3 Justice?

4           A     Well, you supply a methodology of what  
5 you're going to do. And then you do the work and  
6 then you have to show what you've done and what your  
7 recommendations are.

8           Q     Okay. In your studies you talk about use  
9 of force, but does it cover a wider area of law  
10 enforcement?

11          A     We have done, we have done work on early  
12 warning systems, early notification systems. We  
13 have done work on training, a lot of work on  
14 training, but again and the use of force and driving  
15 issues mainly. Done work on hiring, retaining.  
16 Obviously getting in the timely topics of retention  
17 and recruiting.

18          Q     And do these studies, do they look at one  
19 department in general or specifically or does it  
20 look at more departments across the country?

21          A     Well, some have components of surveys that  
22 we do national surveys. Some have components where  
23 we survey officers. The driving one, the last one  
24 we did a few years ago pre-Covid was oh, gosh, I  
25 think it was 12 or 15, 12 or 16 departments in

1 California. But a lot of our use of force studies,  
2 some of them yeah, do focus on single agency. Some  
3 on multiple.

4 Q And these studies, are they listed in your  
5 C.V.?

6 A Yes, sir.

7 Q Okay. It says here in your supplemental  
8 report that you're a Federal monitor for the New  
9 Orleans Police Department?

10 A Yes, sir.

11 Q By a consent decree?

12 A It is a Federal consent decree. I'm one  
13 of the monitors, yes, sir.

14 Q How did you get picked as a monitor?

15 A I was asked by the main, by the  
16 monitoring -- well, the main monitoring who was  
17 applying to the justice department for the City of  
18 New Orleans about seven, well, probably about eight  
19 years ago. And I was one of the few academics  
20 selected.

21 Q In that case do you know what that case  
22 involved?

23 A The consent decree?

24 Q Yes.

25 A It was 300 and some paragraphs of reform

1 that New Orleans Police Department had to, had to  
2 do. So there were all aspects of the department  
3 including use of force, including tasers,  
4 including -- it was pretty much the whole department  
5 training, early warning system. I mean it was very  
6 complex. Probably the most complex consent decree.

7 Q Did that involve the use of force as well?

8 A Yes, sir.

9 Q And what was the concern with the use of  
10 force?

11 A Well, they were using excessive force.  
12 They were using it improperly. They were using it  
13 extensively. They just had a lot of reform looking  
14 at the statistics they didn't keep very well. I  
15 mean there's pretty much everything they did in New  
16 Orleans prior, right after the storm to the time  
17 where we got hired to do the consent decree was  
18 pretty bad.

19 Q And who put you in charge as a monitor?

20 A We were approved by the Court -- well, by  
21 the City, by the police department and by the  
22 Federal Court.

23 Q Okay. That was a District Court judge?

24 A Correct.

25 Q It also says here compliance team member

1 for the Portland, Oregon Police Bureau?

2 A Yes, sir.

3 Q And what did that case concern?

4 A That was mostly use of force and mental  
5 illness. The claim was that the department, the  
6 government claimed that the department was using  
7 force excessively and extensively with people who  
8 had mental problems.

9 Q And how were you put into place as a  
10 compliance team member?

11 A I was hired by the director of the  
12 compliance team. It's kind of like a monitor, but  
13 not exactly. We do the same thing. It's a more  
14 limited, more limited -- it's not a consent decree.  
15 It's -- oh, gosh. It's the next level down. I  
16 can't remember the term they used. But it's  
17 basically the same thing. We go in there and we  
18 make sure that there's -- what they're doing is  
19 accepted police practice.

20 Q Okay. And let's talk about accepted  
21 police practice. How do you determine what the  
22 accepted police practice is?

23 A Well, based on our attending meetings with  
24 the International Association Chiefs of Police or  
25 the Major City Chiefs Association or the Police

1 Executive Research Forum, talking to people,  
2 reviewing their policies, understanding what they're  
3 doing and why they're doing it. So it's really an  
4 understanding of what these agencies are doing.  
5 It's not a survey, although the Bureau of Justice  
6 Statistics does some surveys. It's more of an  
7 understanding of what these agencies, the practices  
8 that they are following.

9 Q Okay. Have you ever been qualified in  
10 court as an expert witness?

11 A Yes, sir.

12 Q How many times?

13 A I mean I probably testified in court 40  
14 times, 45 times, maybe 50.

15 Q Is that in Federal Court as well as State  
16 Court?

17 A Yes, sir.

18 Q Okay. And have you been qualified as, in  
19 a Federal Court here in Georgia?

20 A Yes, sir.

21 Q Do you know what district?

22 A I don't recall.

23 Q Okay. Do you know how many times?

24 A I mean I have testified in Federal Court  
25 in Georgia and Florida probably five, six times over

1 my career.

2 Q Are those all use of force or excessive  
3 force cases?

4 A It was split between driving, emergency  
5 driving or pursuits and use of force. I don't  
6 recall which one was which.

7 Q Have you ever not been qualified as an  
8 expert?

9 A I have been limited quite often. And I  
10 think there's one time in northeast that I was --  
11 well, been a couple of times where the courts just  
12 aren't going to accept -- aren't going to have  
13 testimony from an expert. And there was one case I  
14 recall in, I can't remember. Somewhere in the  
15 northeast. Where the lawyer in the Daubert motion  
16 said I'd never testified in Federal Court and the  
17 judge said well, you're not going to testify here.  
18 And then I have been told other cases one or two,  
19 but I never seen any documentation.

20 Q Okay. And in what field are you usually  
21 qualified as an expert witness?

22 A Police practices.

23 Q What's the purpose of having a, an  
24 accepted police practice or a nationally accepted  
25 police practice?

1           A       It's to keep policing standardized. I  
2 mean we have 18,000 police departments and it's  
3 difficult in other countries. For example,  
4 Australia eight police departments and a Federal  
5 police department. So it's trying to keep police  
6 the same all around the country.

7           Q       And why is that important?

8           A       Well, it's important for sometimes if  
9 officers want to move from one department to  
10 another, the changes will be minimal. It's good for  
11 the public to understand they go from one place to  
12 another that the rules are going to be the same.  
13 It's a standardization issue where departments do  
14 what is best for themselves or for officer and  
15 public safety.

16          Q       The accepted police practice, does it get  
17 updated over time?

18          A       Yes, sir.

19          Q       And why does it get updated?

20          A       Well, new things are, I mean technology is  
21 really important. Changes in acceptable behavior is  
22 well known among departments. Some of the larger  
23 departments may experiment with things and it gets  
24 filtered down. Or smaller departments might have  
25 research projects -- excuse me. That are accepted



1 by other departments and spread very quickly.

2 Q Is there anything that requires a police  
3 department to adopt nationally accepted standards?

4 A Well, consent decrees do. And if you look  
5 at a consent decree city, you look at the policy in  
6 any consent decree city, it's probably gone through  
7 the most scrutiny of any policy. But no, if there's  
8 no state law. New Jersey has a lot of Attorney  
9 General guidelines on use of force and pursuant  
10 driving. But if there are no laws and no court case  
11 such as a consent decree, there's nothing that  
12 requires you legally.

13 Q Would it be fair to say that some  
14 departments are behind the curve when it comes to --

15 A Yes.

16 Q -- when it comes to adopting standards?

17 A Yes, sir.

18 Q You were asked some questions about the  
19 video that you reviewed in this case. Do you  
20 remember that?

21 A Yes, sir.

22 Q The video that you reviewed, was that from  
23 Officer Lewis?

24 A I don't recall. It could be. I don't  
25 remember.

1           Q     If you look in your report on page two  
2 does it appear that it was Officer Lewis or was it  
3 someone else?

4           A     Yeah, it doesn't indicate.

5           Q     Okay. But you kind of chronicled what you  
6 reviewed in this video, correct?

7           A     Yes.

8           Q     And when you watched this video, were you  
9 able to tell if Fernando Rodriguez was being  
10 combative?

11          A     I didn't think he was being combative. I  
12 think he was being, I think he was just not being  
13 cooperative. He wasn't being compliant. He wasn't  
14 following orders. And then after he started getting  
15 shot with a taser, he became upset let's say. And I  
16 think that's where he started to resist more.

17          Q     Can you tell from the video if officers  
18 used a taser on him?

19          A     Yes, sir.

20          Q     Can you tell from the video if he was  
21 placed in the prone position?

22          A     Yes, sir.

23          Q     Can you tell from the video if he was  
24 handcuffed?

25          A     Yes, sir.

1           Q     Can you tell from the video if at some  
2 point he became unresponsive?

3           A     Yes, sir.

4           Q     Could you tell from the video if any of  
5 the officers ever attempted to render medical aid?

6           A     I couldn't, I don't -- I didn't see any  
7 officers giving assistance. I believe it was the  
8 medical EMTs who did.

9           Q     Could you tell from the video if one of  
10 the officers kneeled on Fernando's back after  
11 Fernando had become unresponsive?

12          A     I believe so. But as I testified earlier,  
13 it was really hard to tell how unresponsive he was  
14 or if he was being held down. And I can't  
15 distinguish.

16          Q     At some point in the video would you agree  
17 that there was no movement from Fernando?

18          A     That's correct.

19          Q     And at some point there was nothing, no  
20 words or noises coming from his mouth?

21          A     That's correct.

22          Q     You said that one of the nationally  
23 accepted police practices is to roll a person over  
24 onto their side from the prone position as quickly  
25 as possible, right?

1           A     Yes, sir.

2           Q     And why is that?

3           A     Because there's several, well, decades ago  
4     there were people dying from this, what they called  
5     them positional asphyxia, which now I think it's  
6     called compression asphyxia. And it, there was a  
7     lot of research done on healthy subjects. But the  
8     general police response was to play it safe. And  
9     because there was at least a controversy if not a  
10    crisis, they decided to, a lot of departments -- and  
11    I think kind of the national standard became to,  
12    once someone was not resisting, someone was under  
13    control, to get him off of his stomach as quickly as  
14    possible.

15          Q     In September --

16               MR. MORRIS: Can we take like a two-minute  
17    break real quick?

18               MR. JOHNSON: Sure.

19               (Whereupon a recess was taken.)

20    BY MR. JOHNSON:

21          Q     Back on the record. Dr. Alpert, back in  
22    September of 2019 was it the commonly accepted  
23    police practice or the nationally accepted police  
24    practice to roll someone on their side as quickly as  
25    possible after being placed in the prone position?

1           A     Yes, sir.

2           Q     Okay. And did that happen in this case?

3           A     No, sir.

4           Q     And at the time of this event in September  
5 of 2019, would you consider Henry County Police  
6 Department's policies to be adequate when it came to  
7 the use of the prone position?

8           A     No, sir.

9           Q     And why not?

10          A     I mean there just wasn't any mention of it  
11 in the taser policy. I mean, the taser policy was  
12 unacceptable as well. I didn't see any mention of  
13 it in use of force policy. The policies I saw from  
14 Henry County were sub -- were woefully inadequate.

15          Q     There's been some discussion about the  
16 amicus brief that you noted in your report. How  
17 long has law enforcement been aware of the dangers  
18 associated with the use of the prone restraint?

19          A     Oh, since probably the late eighties,  
20 early nineties.

21          Q     And I asked about the use of force policy  
22 upon restraint. Henry County Police Department's  
23 taser policy in 2019, was that adequate?

24          A     Not at all.

25          Q     And why not?

1           A     It didn't consider any of the problems,  
2     any of the considerations that were well known  
3     among, in the law enforcement community. And like I  
4     said several times, one of the few restrictions for  
5     tasers was against pregnant women. And even then it  
6     was dependent what they consider totality of the  
7     circumstances. So they didn't consider the dangers  
8     of, of using a taser in the policy.

9           Q     Were there other considerations that you  
10    can think of off the top of your head?

11          A     In the policy?

12          Q     That it lacked?

13          A     Well, mainly the restrictions, the number  
14    of applications, the dangers of multiple  
15    applications. It was just a very, very weak, weak  
16    policy.

17          Q     Did it meet the standard for nationally  
18    accepted police practices at the time?

19          A     No, sir.

20          Q     I think opposing counsel had talked about  
21    trying to identify some magical point of when he  
22    became unresponsive. Do you recall that?

23          A     Yes, sir.

24          Q     Would you agree that at some point he did  
25    in fact become unresponsive or not, or was complying

1 with the officers?

2 A Well, he, I don't think he was compliant  
3 until -- I mean I couldn't tell if he was compliant  
4 until he became unresponsive.

5 Q Okay. At some point he did become  
6 unresponsive?

7 A Correct.

8 Q And at that point would the nationally  
9 accepted police practice had been to roll him on to  
10 his side?

11 A Absolutely.

12 Q And again, that was not done?

13 A Correct.

14 Q You were asked about a study I believe by  
15 Kroll, someone named Kroll, about 225 pounds of  
16 weight was a safe amount to place on someone. Do  
17 you recall that?

18 A Yes, sir.

19 Q Okay. Do you know the specifics of that  
20 study?

21 A Well, I know they, they placed free  
22 weights on the back of people and then they had them  
23 hooked up to monitors and basically came to the  
24 conclusion it was safe to put that much weight on  
25 these particular subjects.

1           Q     When you say free weights, do you know  
2 what that means?

3           A     Well, they were just like ones you put on  
4 barbells.

5           Q     Okay. But not, it wasn't an actual knee  
6 on someone's back?

7           A     No, sir.

8           Q     And you said these were healthy people?

9           A     Yes, sir.

10          Q     Do you know how many people?

11          A     I don't recall the number in that study.

12          Q     Is there anything else about the use of  
13 force policy or the taser policy that you think is  
14 important?

15          A     Well, I just think they're inadequate. I  
16 think they're very general. I think they're very --  
17 they don't give much guidance. I think the --  
18 there's nothing in there about a duty to intervene  
19 that is in the power point. Although I don't know  
20 the date of the power point. There was just a lot  
21 of things that was going on in 2019 that were not  
22 covered in these policies.

23          Q     In part of your research, have you ever  
24 studied anything about an officers duty to assist an  
25 arrestee who appears to be in medical distress?



1           A     Well, you say duty to arrest. I'm not  
2     sure that, there's a lot of discretion. Some cases  
3     have less discretion than others. I'm not aware  
4     of -- other than with a warrant or with, you know,  
5     some sort of court order that there's a duty to  
6     arrest.

7           Q     I think --

8           A     I think that's a legal opinion.

9           Q     I think I misspoke. I meant a duty to  
10    render medical aid to someone that appears to be in  
11    distress.

12           MR. MORRIS: I just want to be clear about  
13    this, Jess. That is not a part of his opinion.  
14    It is not part of his Rule 26 report. And I'm  
15    not paying for this fourth hour. You're going  
16    to ask him questions that are beyond the scope  
17    of a Rule 26 report then I --

18           MR. JOHNSON: Just curious --

19           MR. MORRIS: Huh?

20    BY MR. JOHNSON:

21           Q     I was just curious. Have you ever done  
22    anything like that?

23           A     Have I ever done anything dealing with the  
24    duty to provide medical assistance?

25           Q     Right.

1           A       I mean, I have been through training where  
2   in use of force training where the training says,  
3   you know, obviously if you can, you go and give  
4   medical assistance as soon as possible.

5           MR. JOHNSON: Okay. I think that's all I  
6   have.

7           MR. MORRIS: Very good. Thank you,  
8   Dr. Alpert. I appreciate it.

9           [Deposition concluded at 1:48 p.m.]

10          [Signature reserved.]

1 DEPOSITION OF DR. GEOFFREY ALPERT:

2 I do hereby certify that I have read all  
3 questions propounded to me and all answers given  
4 by me on June 30, 2022, taken before  
5 Angie Cornett, and that:

6 \_\_\_\_\_ 1) There are no changes noted.

7 \_\_\_\_\_ 2) The following changes are noted:

8 Pursuant to Rule 30 (7)(e) of the Federal  
9 Rules of Civil Procedure and/or the Official Code  
10 of Georgia Annotated 9-11-30(e), both of which read  
11 in part: Any changes to form or substance which you  
12 desire to make shall be entered upon the deposition  
13 with a statement of the reasons given for making them.  
14 Accordingly, to assist you in effecting corrections,  
15 please use the form below:

16  
17 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ should read:

18 \_\_\_\_\_

19 \_\_\_\_\_

20 And the reason for the change is: \_\_\_\_\_

21 \_\_\_\_\_

22 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ should read:

23 \_\_\_\_\_

24 \_\_\_\_\_

25

1 And the reason for the change is: \_\_\_\_\_

2 \_\_\_\_\_

3  
4 If supplemental or additional pages are necessary,  
5 please furnish same in typewriting annexed to this  
6 deposition.

7  
8 \_\_\_\_\_  
9 Dr. Geoffrey Alpert

10  
11 Sworn to and subscribed before me,  
12 this the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

13  
14 \_\_\_\_\_  
15 Notary Public

16 My commission expires: \_\_\_\_\_  
17  
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24  
25

## C E R T I F I C A T E

STATE OF GEORGIA

COUNTY OF BARTOW:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 161 represent a true, complete, and correct transcript of the evidence given upon said deposition, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anyway interested in the result of said case.

This, the 30th day of June 2022.

---

Angie Cornett, CCR B-1713

My commission expires on  
March 31, 2023.

## 1 DISCLOSURE

2  
3 STATE OF GEORGIA

4 COUNTY OF BARTOW

5 Deposition of: DR. GEOFFREY ALPERT

6 Date: June 30, 2022  
78 Pursuant to Article 8.B of the Rules and  
9 Regulations of the Board of Court Reporting of the  
10 Judicial Council of Georgia, I make the following  
disclosure:11 I am a Georgia Certified Court Reporter. I  
12 am here as a sole practitioner representing Thompson  
Reporting Services.  
1314 The firm was contacted by the offices of  
15 Williams, Morris & Waymire, LLC to provide court  
reporting services for this deposition. I will not be  
16 taking this deposition under any contract that is  
prohibited by O.C.G.A. 15-14-37 (a) and (b). This reporter  
17 is only capable of taking down testimony heard via Zoom  
audio.  
1819 I have no contract/agreement to provide  
20 reporting services with any party to the case, any  
counsel in the case, or any reporter or reporting  
21 agency from whom a referral might have been made to  
cover this deposition. I will charge my usual and  
22 customary rates to all parties in the case, and  
a financial discount will not be given to any  
23 party to this litigation.  
2425 \_\_\_\_\_  
Angie Cornett, B-1713

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